

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

Arizona Corporation Commission

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AZ CORP COMMISSION  
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In the matter of

PROPOSED RULEMAKING

A.A.C. R14-4-148 UNDER THE ARIZONA  
SECURITIES ACT

DOCKET NO. RS-00000A-99-0691

SECURITIES DIVISION'S RESPONSE  
TO COMMENTS

I.

PROCEDURAL HISTORY

On July 18, 2000, in Arizona Corporation Commission Decision No. 62735, the Arizona Corporation Commission (the "Commission") ordered that the Securities Division prepare and forward to the office of the secretary of state for publication a notice of proposed rulemaking regarding the making of A.A.C. R14-4-201 through R14-4-209 (collectively "Article 2"). The Commission also ordered that a hearing be set by the Hearing Division on this matter on a date no earlier than September 18, 2000. The hearing was set for September 26, 2000, at 9:30 a.m.

Because of significant comments from industry, on September 13, 2000, the Securities Division filed a motion to continue the public hearing in order to allow the Securities Division time to address the concerns of the members of the Canadian regulatory community and securities industry that would be affected by the proposed rulemaking. On September 14, 2000, the Hearing Division continued the hearing indefinitely.

On February 1, 2001, in Arizona Corporation Commission Decision No. 63321, the Commission ordered the Securities Division to prepare and forward to the office of the secretary of state for publication a notice of supplemental proposed rulemaking regarding the making of A.A.C. R14-4-148 (rule 148). Rule 148 was proposed to replace the previously proposed Article 2. The

1 Commission also ordered that a hearing be set on the amended proposal by the Hearing Division on  
2 a date no earlier than April 2, 2001. The hearing is set for April 25, 2001, at 9:30 a.m.

3 The Securities Division files this Response to Comments pursuant to the February 6, 2001  
4 Procedural Order issued by the Hearing Division in connection with Decision No. 63321 (the  
5 "Procedural Order"). The Procedural Order requested that responses to written comments received  
6 on or before April 5, 2001, be filed on or before April 17, 2001.

## 7 II.

### 8 **TRANSITION FROM LIMITED REGISTRATION TO EXEMPTION**

9 The previously proposed Article 2 provided for a limited registration for certain Canadian  
10 dealers and their salesmen effecting transactions in Arizona. During the public comment period on  
11 Article 2, the proposed limited registration was reviewed by members of the Canadian securities  
12 industry organizations and members of the Canadian securities regulatory community. These  
13 industry representatives recommended the Commission adopt an exemption instead of a limited  
14 registration. Based upon the information the industry provided to support that recommendation,  
15 the Securities Division amended its proposed rulemaking to reflect an exemption in the form of rule  
16 148 instead of a limited registration in the form of Article 2. The comments and information  
17 submitted to the Securities Division in connection with the transition from a limited registration  
18 proposal to an exemption proposal are contained in exhibit A and include the following: September  
19 22, 2000, letter from the Investment Dealers Association of Canada (the "September IDA letter");  
20 September 25, 2000, letter from Dorsey & Whitney (the "September Dorsey & Whitney letter");  
21 September 28, 2000, letter from the Canadian Embassy; and September 29, 2000, letter from Mr.  
22 Douglas Frost.

23 The Canadian territorial and provincial securities regulators strongly supported the move  
24 toward relaxing registration standards for Canadian dealer transactions regarding Canadian  
25 retirement plans. Much of the oversight under the proposed limited registration duplicated the  
26 efforts being made by the various Canadian regulatory authorities. The majority of the comments

1 to proposed Article 2 requested that the Commission recognize and refrain from unnecessarily  
2 duplicating the enforcement and oversight efforts of the territorial and provincial securities  
3 regulators and those of the Canadian self-regulatory organizations.

4 The Canadian regulatory scheme is similar to that of the United States, although it lacks a  
5 federal regulatory authority like the Securities and Exchange Commission. Each territory and  
6 province has a securities regulator much like every state in the United States with the same  
7 oversight and enforcement powers. Several self-regulatory organizations provide member  
8 oversight similar to that provided in the United States by the National Association of Securities  
9 Dealers ("NASD"). The vast majority of dealers that engage in activity in Canada belong to the  
10 Investment Dealers Association of Canada ("IDA"). In addition, several exchanges regulate their  
11 own members much like the New York and American Stock Exchanges regulate theirs. If a dealer  
12 conducts transactions on any of the regional exchanges, it must comply with the exchange  
13 regulations in addition to those of the IDA and the territorial or provincial governments.

14 In the September IDA letter and the September Dorsey & Whitney letter, the IDA provided  
15 the Securities Division with significant documentation relating to its member regulation and  
16 investor protection efforts. The IDA has comprehensive member reporting requirements, investor  
17 protection standards, arbitration requirements, member audits, market regulation, and general  
18 member oversight. The data forwarded to the Securities Division indicates IDA's enforcement  
19 efforts and regulatory scheme is similar to that of the NASD. As a result, the Securities Division  
20 considers the proposed exemption under rule 148 to provide sufficient investor protection without  
21 imposing an undue regulatory burden on the regulated community.

### 22 III.

#### 23 THE COMMENT LETTERS

24 In response to the notice of supplemental proposed rulemaking, the Securities Division  
25 received four formal comment letters on rule 148 (collectively the "formal comment letters") on or  
26 before April 5, 2001, from the following: February 16, 2001, letter from the Investment Dealers

1 Association of Canada (the "February IDA letter"); March 9, 2001, letter from Dorsey & Whitney  
2 (the "March Dorsey & Whitney letter"); April 4, 2001, letter from Edward Jones (the "Edward  
3 Jones letter"); and April 5, 2001, letter from Dorsey & Whitney (the "April Dorsey & Whitney  
4 letter"). The formal comment letters are attached to this response as exhibit C.

5 Prior to the publication of the notice of supplemental proposed rulemaking, to aid in its  
6 drafting process, the Securities Division requested and received informal written comments from  
7 the industry (collectively the "informal comment letters"), including the following: December 4,  
8 2000, letter from the Investment Funds Institute of Canada; December 5, 2000, letter from Dorsey  
9 & Whitney (the "December Dorsey & Whitney letter"); December 5, 2000, letter from the  
10 Canadian Embassy; and December 20, 2000, letter from the British Columbia Securities  
11 Commission (the "December BCSC letter"). The informal comment letters are attached to this  
12 response as exhibit B.

13 The Securities Division satisfied many of the concerns raised in the informal comment  
14 letters during the drafting process. The only concerns not satisfied related to the automatic  
15 disqualification provision in rule 148(D). The concerns relating to rule 148(D) that were raised in  
16 the December BCSC letter and the December Dorsey & Whitney letters will be addressed in the  
17 next section. The informal comment letters generally support many of the provisions contained in  
18 proposed rule 148 and the Securities Division appreciates the supporting comments.

19 After the receipt of the informal written comments, the notice of supplemental proposed  
20 rulemaking was published and the industry was again given an opportunity to comment. These  
21 comments are contained in the formal comment letters to which the Securities Division now  
22 responds.

#### 23 IV.

#### 24 RESPONSE TO INDUSTRY COMMENTS

25 The adoption of A.A.C. R14-4-148 (rule 148) is generally supported by the industry. The rule  
26 provides for an exemption from registration for certain Canadian dealers and their salesmen in

1 Arizona in two specific circumstances: for Canadians that are visiting or are temporarily in Arizona; or  
2 for United States or Canadian participants in certain Canadian tax-deferred retirement plans while they  
3 are in Arizona. The Commission will rely on the Canadian territorial and provincial governments and  
4 the Canadian self-regulatory organizations to provide the daily oversight. Under the exemption, the  
5 Commission retains jurisdiction over activities that fall outside the exemption as well as antifraud  
6 jurisdiction. As an additional investor safeguard, rule 148(D) automatically precludes dealers and  
7 salesmen with poor disciplinary histories from using the exemption.

#### 8 **A. Response to Informal Comments**

9 The Securities Division satisfied most of the concerns raised in the informal comment letters  
10 during the drafting process. The only concerns not satisfied related to the automatic  
11 disqualification provision in rule 148(D). The concerns relating to the disqualification provision  
12 were raised in the December BCSC letter and the December Dorsey & Whitney letters.

13 1. The December BCSC letter recommended the disqualifying language in rule 148(D) be  
14 amended to provide for notice of past conduct as opposed to operate as an automatic  
15 disqualification provision. The BCSC commented that the “proposed Canadian rule to implement  
16 the North American Securities Administrator’s (“NASAA”) Proposal does not contain a  
17 corresponding blanket prohibition, but requires a United States broker-dealer or agent to notify the  
18 provincial or territorial securities regulators of prior criminal or quasi-criminal proceedings, or of  
19 any decision, order or ruling made as a result of any form of proceeding involving fraud, theft,  
20 deceit, misrepresentation or similar conduct.” The reciprocal Canadian rule went into effect on  
21 January 1, 2001.

22 The Securities Division did not draft rule 148 to mirror either the NASAA proposal or the  
23 Canadian rule. The Securities Division patterned the exemption in rule 148 after other exemptions  
24 from registration under the Arizona Securities and Investment Management Acts (the “Acts”) and  
25 Title 14 of the Arizona Administrative Code (the “Code”). An exemption is a privilege and  
26 reserved for those entities and persons that do not require the scrutiny of registration. The purpose

1 of the automatic disqualifying provision in rule 148 is to ensure that certain dealers and salesmen  
2 with poor disciplinary histories are not conducting business in Arizona pursuant to the exemption,  
3 but are subject to the increased scrutiny provided by registration. The automatic preclusion  
4 provides increased investor protection through efficiencies in the administrative process. The  
5 notification process recommended by the BCSC would not have served this purpose and would be  
6 a significant departure from the form of other exemptions under the Acts and the Code. The  
7 Securities Division does not see any justification for creating a unique exemption in this case and  
8 believes that the exemption in rule 148 should have the same automatic disqualifying provision as  
9 other exemptions.

10 2. The December Dorsey & Whitney letter recommended a change to the language of the  
11 disqualifying provision in rule 148(D)(2). The Securities Division did not make the recommended  
12 change. The concern was again raised in the formal comment period in the March Dorsey &  
13 Whitney letter and is addressed in section B.1 below.

#### 14 **B. Response to Formal Comments**

15 The February IDA letter expressed general support for the objective of rule 148 and did not  
16 provide any substantive comments.

17 The March Dorsey & Whitney letter recommends two changes to rule 148 as proposed by the  
18 Securities Division.

19 1. Dorsey & Whitney recommends that the Commission amend the language of the  
20 disqualifying provision in rule 148(D)(2) to eliminate the language “involving fraud, deceit,  
21 racketeering or consumer protection laws” and replace it with a requirement for a “finding of fraud  
22 or deceit or a finding of a violation of racketeering or consumer protection laws.”

23 The subject language in rule 148(D)(2) is identical to numerous other disqualifying provisions  
24 in the Acts and the Code. The purpose of these disqualifying provisions is to ensure that certain  
25 entities and persons with poor disciplinary histories are not conducting business in Arizona  
26 pursuant to an exemption, but are subject to the increased scrutiny provided by registration. A

1 change in the language of rule 148 would render rule 148 inconsistent with other exemptions.  
2 Since the purpose of the disqualifying provision in rule 148 is the same as the other exemptions in  
3 the Acts and in the Code, the Securities Division did not see any justification for creating a unique  
4 disqualifying provision for this particular exemption. The Securities Division believes that the  
5 language in rule 148(D)(2) should be subject to the same application and interpretation as other  
6 identical disqualifying provisions and recommends making no change.

7 2. Dorsey & Whitney recommends that the Commission eliminate the requirement for a  
8 notice filing for all salesmen conducting business in Arizona under rule 148(E)(5). Dorsey &  
9 Whitney maintain that the Canadian regulatory scheme requires that Canadian dealers can only  
10 employ salesmen that are appropriately registered and in good standing in the Canadian jurisdiction  
11 from which they are effecting transactions. Since rule 148(E)(5) does not attempt to impose  
12 substantive regulation, they recommend this requirement be deleted in its entirety because it  
13 imposes significant costs to the dealers that would operate under rule 148 while adding little to  
14 investor protection.

15 The Securities Division proposed an annual notice filing for all dealers and salesmen that  
16 would effect securities transactions in Arizona under rule 148. The annual notice filing for  
17 salesmen would consist of a copy of the latest registration or renewal document on file with their  
18 home jurisdiction and a consent to service of process. The objective of the annual filing is to  
19 ensure the Commission has current information regarding the entities and people effecting  
20 securities transactions in this state in order to monitor compliance with rule 148 and to provide  
21 assistance to any investor seeking it from the Commission. The Commission retains full  
22 jurisdiction over all activities that fall outside of the language of rule 148 as well as jurisdiction  
23 over all activities involving fraud.

24 The Securities Division's purpose in pursuing an exemption instead of a limited registration  
25 recognizes the enforcement and oversight efforts of the Canadian regulatory officials. The  
26 Securities Division sought to avoid unnecessary duplication of efforts, but never sought to

1 completely substitute Canadian oversight for that of the Commission. The Securities Division  
2 believes the Commission has responsibility relating to all securities transactions that occur in  
3 Arizona. The exemption language in rule 148 was intended to allow the Commission to rely upon  
4 the Canadian regulatory authorities for daily oversight, but to provide the Commission with the  
5 current information it needed to ensure investor protection interests were served.

6 The annual filing requirement is consistent with other filing requirements for dealers and  
7 salesmen filing with the Commission under other provisions of the Acts and the Code. The  
8 purpose of an annual filing requirement is twofold: consistency and efficiency of staff review, and  
9 maintenance of current information relating to entities and persons effecting securities transactions  
10 in Arizona. The Securities Division received no other comments on this provision and  
11 recommends making no change.

12 3. The April Edward Jones letter expressed concern that the language in rule 148(A) "or a  
13 natural person associated with a dealer domiciled in the United States" might preclude the  
14 Canadian salesmen of a Canadian subsidiary to a United States dealer from using the exemption in  
15 rule 148. The concerns expressed are well taken. The Securities Division considers the subject  
16 language to be redundant because a natural person located in the United States who was associated  
17 with a United States dealer would constitute a "physical presence" in the United States. As such,  
18 the Securities Division proposes that rule 148(A) be revised as follows.

19 The dealer must be domiciled in Canada, have no office or other physical presence in the  
20 United States, and not be an office-of, or a branch of, ~~or a natural person associated with a~~  
21 dealer domiciled in the United States.

22 4. The April Dorsey & Whitney letter expressed concern that rule 148 might preclude the  
23 Canadian sister entities or Canadian subsidiaries of United States' dealers in the United States from  
24 using the exemption under rule 148. The Securities Division does not share the concerns  
25 expressed. The intent of rule 148 was to allow Canadian dealers and salesmen to effect  
26 transactions in Arizona under the terms of this rule. If the rule is amended as recommended in the

1 preceding paragraph, any ambiguity concerning Canadian sister entities or Canadian subsidiaries  
2 should be eliminated.

3 **V.**

4 **TECHNICAL CORRECTION**

5 The office of the secretary of state has recommended a technical correction to the form of rule  
6 148. The secretary of state has assigned the letter "A" to the introductory paragraph. The  
7 Securities Division recommends that the first paragraph of rule 148 be assigned the letter "A", and  
8 all subsequent paragraphs of equal standing be assigned the next succeeding letter.

9 **VI.**

10 **RENOTIFICATION OF PROPOSED RULES**

11 If the proposed rules are modified by the Hearing Officer to reflect any of the changes that are  
12 proposed in the March Dorsey & Whitney letter, the Securities Division recommends that rule 148  
13 be renoticed in the Arizona Administrative Register, through the filing of a Supplemental Notice.  
14 The Securities Division does not recommend renotification if the Hearing Officer modifies the  
15 rules as recommend by the Securities Division in this Response.

16 The test for whether a rule change has to be renoticed is in A.R.S. § 41-1025. That section  
17 provides that an agency may not adopt a rule that is substantially different from the rule as  
18 originally proposed in either a notice of proposed rulemaking or a supplemental notice. In  
19 determining whether a rule is "substantially different," all of the following are to be considered:  
20 (1) the extent to which all persons affected by the adopted rule should have understood that the  
21 published proposed rule would affect their interests, (2) the extent to which the subject matter of  
22 the adopted rule or the issues determined by that rule are different from the subject matter or issues  
23 involved in the published proposed rule, and (3) the extent to which the effects of the adopted rule  
24 differ from the effects of the published proposed rule if it had been adopted instead. Since the  
25 deletion of the phrase "or a natural person associated with . . ." is the deletion of redundant  
26 language, the recommended rule change would not render the rule "substantially different" from

1 the rule as originally proposed in the notice of supplemental proposed rulemaking.

2 Since it appears that Dorsey & Whitney's proposed changes to rule 148(D)(2) may be  
3 substantially different according to these factors, the Securities Division deems it prudent to  
4 renote the rules if Dorsey & Whitney's proposed changes are recommended by the Hearing  
5 Officer. The Securities Division has discussed this issue with the office of the attorney general  
6 and that office concurs with the Securities Division's recommendation.

7 **XI.**

8 **CONCLUSION**

9 In conclusion, the Securities Division hereby submits its Response to Comments for the  
10 consideration of the Hearing Officer.

11 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of April 2001.

12  
13 By: 

14 SHARLEEN A. DAY  
15 Associate General Counsel, Securities Division  
Arizona Corporation Commission

16 Original filed this 17<sup>th</sup> day of April 2001 with:

17 Docket Control  
18 Arizona Corporation Commission  
1200 West Washington  
19 Phoenix, Arizona 85007

20 Copy delivered this 17<sup>th</sup> day of April 2001 to:

21 Marc E. Stern, Administrative Law Judge  
22 Hearing Division  
Arizona Corporation Commission  
23 1200 West Washington  
Phoenix, Arizona 85007

24 Copies mailed this 17<sup>th</sup> day of April 2001 to:  
25  
26

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13 St. Louis MO 63131-3729

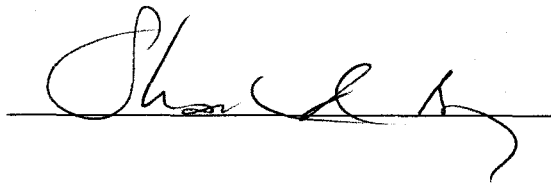
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19 D.G. Waddell, Economic Minister and Deputy Head of Mission  
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Mr. Douglas Frost  
2935 N. 68<sup>th</sup> St., #214  
Scottsdale AZ 85251



## Exhibit A

### Contents

Comment letters and information supporting the transition from a proposed limited registration to a proposed exemption

September 22, 2000, letter from the Investment Dealers Association of Canada

September 25, 2000, letter from Dorsey & Whitney

September 28, 2000, letter from the Canadian Embassy

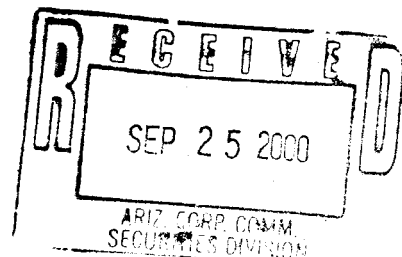
September 29, 2000, letter from Mr. Douglas Frost.



INVESTMENT DEALERS ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

September 22, 2000

Sharleen A. Day  
Associate General Counsel  
Securities Division  
Arizona Corporation Commission  
1300 West Washington  
Phoenix, Arizona  
85007



Dear Sharleen:

It was a pleasure to make your acquaintance at the NASAA Conference in Montreal last weekend. We are pleased that you and your colleagues are giving consideration to our proposal for relief under state law for Canadian broker-dealers to deal with the RRSP accounts of Canadians resident in Arizona. Enclosed to assist in your efforts is information on IDA regulations governing constituent member firms and individual registrants, as well as related financial and sales compliance procedures for member firms. We have arranged for Chuck Potuznik of Dorsey & Whitney to send to you under separate cover statistics on enforcement proceedings and background on IDA registration requirements.

If you have any questions on the enclosed material or any other related matter, please call me at your convenience.

Yours sincerely,

Ian CW Russell

ICWR/lrw

Encl.

cc: Joseph J. Oliver, President, Investment Dealers Association of Canada  
Grant Vingoe, Dorsey & Whitney LLP, New York  
Chuck Potuznik, Dorsey & Whitney LLP, Minneapolis



INVESTMENT DEALERS ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIERES

**MEMORANDUM**

**TO:** Ian Russell  
**FROM:** Larry Boyce  
**DATE:** September 22, 2000  
**SUBJECT:** IDA Sales Compliance Review Procedures

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Following, as you requested, is a brief summary of IDA sales compliance review procedures.

**1. Frequency**

There are four frequency categories:

- Most firms with substantial retail business are reviewed annually.
- The six largest firms are reviewed every eighteen months. These are large reviews done by a team, which take several months to complete. The time between the completion of one review, including the resolution of issues, and the beginning of the next is approximately a year.
- Firms doing almost exclusively institutional business are reviewed every two years.
- Some highly specialized firms, such as those doing solely proprietary trading, are assessed annually (see the outline of the risk assessment procedure below) to determine whether there is any reason to conduct a review. In most cases, no review is conducted. I should note that the issues for firms doing solely proprietary trading related to market regulation. The market activity of these firms is reviewed by the exchanges, who are responsible for compliance with trading rules.

Based on history and circumstances arising, it is possible for firms to be moved between categories. For example an institutional firm may be subject to annual review as a result of an unsatisfactory review or if we become aware of financial problems or client complaints. In some cases, serious deficiencies will result in a follow-up review sooner than would normally be the case.

**2. Risk Assessment**

Prior to each review and annually for specialized firms which may not be subject to a field review, a sales compliance officer conducts a detailed risk assessment. It covers:

- new rules to which the firm may be subject;
- results of past reviews;
- experience of or changes in key executive and compliance staff;
- financial results, including changes in sources of revenue;

- observations of financial compliance examiners during financial compliance audits;
- information from surveillance and trade desk audit staff at the exchanges;
- complaints to the IDA;
- information from the firm on trading activity;
- interviews with senior compliance staff on any questions arising from the above.

As noted above, in some cases this may result in a recommendation not to conduct a field review, based on the firm meeting several criteria indicated a low risk of harm to the public or the markets. In other cases, the risk assessment is used to highlight issues for specific review or areas of the normal review that can be eliminated or de-emphasized.

### **3. Review Topics**

Field reviews cover the following topics:

- Documents and Forms – ensures that documents such as the new account form contains all the necessary know your client information; that agreements contain all the necessary information and terms and do not contain any objectionable items; that current risk disclosure statements are in use; that forms such as confirmations and monthly statements contain required disclosures.
- Written Procedures – ensures that the firm has up-to-date written procedures tailored to their business and that these procedures are distributed or available to the appropriate employees.
- Registration – ensures that the firm's registration records are up-to-date and in agreement with IDA records.
- Training – ensures that firm training material and procedures meet IDA requirements.
- Supervision of Accounts – ensures firms procedures for supervision of account activity are appropriate and are working
- Derivatives – if the firm trades in options and/or futures, ensures that it complies with specific regulations regarding those products. This part of the review covers many of the areas covered for regular accounts, such as documents, account opening and supervision of account activity, but with a specific focus on accounts trading in these products
- Discretionary and managed accounts – ensures that the firm complies with specific rules regarding the opening, operation and supervision of these types of accounts
- Order entry – ensures that the firm complies with rules regarding recording, entry and marking of orders and specific disclosures required on confirmations regarding specific types of trades. For exchange members, much of this part of the review will be curtailed because the exchanges review for the same matters.
- Supervision of Employees – reviews supervision of employee's personal trading, both within and outside the firm, proper authorization and reporting of accounts of employees of other Members, procedures to update relevant employees on rule and procedure changes, opening of mail, supervision of hold mail and returned mail accounts and name/address changes, assignment of RR codes, procedures for assignment of accounts when a registered representative leaves the firm,

outside employment, conflicts of interest, non-securities services provided to clients; internal discipline and special supervision of problem registered representatives.

- Account Opening and Operation— covers new account form completion review, approval and updating, obtaining of supporting documents, distribution and updating of disclosures such as fee schedules, client election regarding receipt of shareholder material, anti-money laundering procedures, referral arrangements, compliance with account transfer documentation and time limit requirements, booking of client-name mutual fund transactions.
- Advertising and Sales Literature – reviews compliance with disclosure, review and approval and content requirements, including Web site material.
- Research – covers same material as Advertising and Sales Literature, plus information barriers procedures between research and corporate finance, controls on internal use only material, controls on use by third parties.
- Corporate Finance/Syndication – reviews information barriers, due diligence, distribution of prospectuses and similar documents, pre-marketing of bought deals, procedures to prevent distribution where prospectus not cleared, controls to ensure bona fide offer to clients before pros are allowed to subscribe, exercise of rescission or withdrawal rights.
- Complaints and Litigation – ensures proper handling and documentation of client complaints and litigation, dealing with other compliance issues raised by complaints or litigation.
- Soft Dollar Arrangements – ensures proper documentation of soft dollar arrangements and payments, compliance with limitations on services paid for.

#### **4. Review Process**

Following are the major steps in a review:

- Interviews with compliance and other relevant personnel regarding each subject area.
- Physical review of documents, procedures, etc.
- Selection of samples of relevant material such as account opening documents and trading, supervision records, advertising, corporate finance files, gray and restricted lists, orders records, etc. to confirm procedures are operational and working. Account samples are not random; they are based on reviews of other material such as information on complaints, problem RR's, blotters, active account records, etc.
- Responses and physical review results are documented as done and deficiencies identified.
- At completion of the field review, a preliminary verbal report on the results is given to senior compliance staff. In many cases, this will result in action to rectify deficiencies prior to receipt of a final report.
- A report is compiled and reviewed by Sales Compliance Managers, including deficiencies identified, details regarding specific accounts or other material evidencing deficiencies, and action required to rectify deficiencies. The report may also include recommendations for improvements that are not specifically required by regulations.

- A draft report is sent to and reviewed (by telephone or in person) with senior compliance staff to ensure that it contains no factual errors.
- After any factual errors are rectified, a final report is issued.
- The firm has 30 days from issuance of the final report to describe actions taken to rectify deficiencies. The response must include evidence of actions taken, such as new procedures, notices to staff, revised account documentation, etc. In some cases rectification may take longer than 30 days, in which case due dates are set and followed up through an tracking system.
- Where serious repeat deficiencies or improper activity is found, the matter will be referred to Enforcement for investigation. This may occur prior to the preparation or issuance of the report. In some cases, such as those involving *Securities Act* provisions or criminal activity, the matter may also be referred to a provincial securities commission and/or police.

## Omitted Material

### Contents

CD-rom submitted by the Investment Dealers Association of Canada ("IDA") containing the following.

- IDA Rule Book – July 1999 (updated 7/7/00), 2815 pages
- Reference and Study Guide for Financial Regulation of Securities Firms – December 1999, 554 pages

Material is submitted separately on CD-rom.

**CD**

**-IDA Rules, Ref and Study Guide**

**TO REVIEW SEE DOCKET SUPERVISOR**

**DOCKET**

**RS-00000A-99-0691**

RS-00000A-99-0691  
A.A.C. R14-4-148

To be filed with exhibit A

IDA Rule Book-July 1999 (updated 7/7/00)  
Reference and Study Guide for Financial  
Regulation of Securities Firms - 12/99

IDA RULES, REF AND STUDY GUIDE

# DORSEY & WHITNEY LLP

MINNEAPOLIS  
NEW YORK  
SEATTLE  
DENVER  
WASHINGTON, D.C.  
DES MOINES  
ANCHORAGE  
LONDON  
COSTA MESA

PILLSBURY CENTER SOUTH  
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TELEPHONE: (612) 340-2600  
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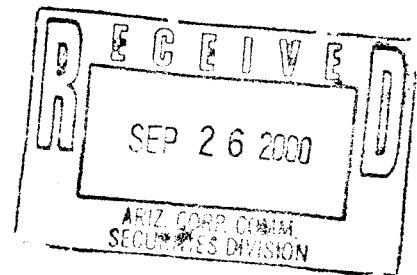
**CHARLES LADDY POTUZNIAK**  
**(612) 340-2914**

BILLINGS  
GREAT FALLS  
MISSOULA  
BRUSSELS  
FARGO  
HONG KONG  
ROCHESTER  
SALT LAKE CITY  
VANCOUVER

September 25, 2000

**VIA FEDERAL EXPRESS**

Sharleen Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007



Re: Investment Dealers Association of Canada

Dear Sharleen:

As mentioned in Ian Russell's letter, I am forwarding to you the materials you requested regarding the IDA's statistics on enforcement proceedings and background on IDA registration requirements.

We look forward to working with you and the Securities Division on the Snowbird Proposal. Please feel free to give me a call if you have any questions or comments.

Very truly yours,

C. L. Potuznik

CLP:vw  
Enclosures

cc: Mr. Ian CW Russell, IDA Senior Vice President, Capital Markets (w/o enclosures)  
D. Grant Vingoe, Esq. (w/enclosures)



INVESTMENT DEALERS ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DES COURTIER EN VALEURS MOBILIÈRES

## MEMORANDUM

To: Ian Russell, Senior Vice President, Capital Markets  
From: Wendyanne D'Silva, Manager, Registrations  
Date: September 14, 2000  
Re: **Registration**

Part of the review process performed by IDA Registration, involves a background check on all individuals applying for registration to trade with an IDA member firm.

### **Uniform Application Form**

Each applicant is required to submit a Form 1-U-2000 (Uniform Application Form) which is reviewed in detail by a Senior Registration Officer. The 12-page form (attached) requires disclosure of background information including employment history, bankruptcies, criminal convictions or involvement in civil litigation involving fraud.

In addition to the information disclosed, IDA Registration uses the following additional resources:

### **Criminal Records Check**

A criminal records check is performed by the RCMP on every applicant.

### **IRIS Background Check**

The names of all new applicants are checked through the Intelligence Reference Indexing System ("IRIS") – a database with information on over 30,000 people and companies. This database contains information on past and ongoing investigations by securities regulators in Canada, disciplinary actions and any other regulatory problems.

### **Securities Commission Database**

Each IDA Regional office has access to the registration database run by the Securities Commission for that region, and checks the database for any regulatory alerts, or notes prior as part of the review process.

Please let me know if you require any further assistance in this matter.

cc F. Maefs, Vice President, Enforcement  
M. Alexander, Legal & Policy Counsel, Regulatory Policy

**General Instructions**

1. This form is to be used by every individual seeking registration or approval from a Canadian Securities Commission or similar authority and/or a self-regulatory organization, or submitting an application for registration or approval as a partner, director or officer of a dealer, broker or adviser to a Canadian Securities Commission or similar authority.
2. This form may also be used by any individual submitting an application for registration as a dealer, broker or adviser to a Canadian Securities Commission or similar authority.
3. All applicable questions must be answered. Failure to do so may cause delays in the processing of the application form.
4. This form and all attachments added thereto must not be handwritten. Any form or attachment completed by such means may be considered not properly filed.
5. All attachments pertaining to any question must be made exhibits to the form and each one must be so marked. All signatures must be originals. The Commissioner of Oaths or Notary Public before whom the application is sworn, as well as the applicant, must initial all attachments.
6. In completing the application, applicants should seek advice from an authorized officer of the sponsoring firm or from a legal adviser, if necessary.
7. The number of originally-signed copies of the form and attachments required to be filed with the self-regulatory organization and/or Securities Commission or similar authority varies from province to province. If unsure of the procedure, please consult the Registration Department of the self-regulatory organization through which you are applying or the applicable Securities Commission, or similar authority.
8. Applicants for registration in Quebec need only disclose information for the past 10 years in respect of Questions 15B), 15D), 17A), 17B), 18 and 19.

1. **APPLICANT** (legal names should be listed here and aliases or known as names should be listed under question 11)

Last Name		First, Second & Third Names	
Legal Last Name (if different from above)		Legal First, Second & Third Names (if different from above)	
Residential address (with postal code)		Area Code and Telephone:	
Address for service in province of registration (with postal code)		Social Insurance Number (not required for applications in Ontario)	
Present position in the firm ( <i>note this is not the position for which you are currently applying</i> ).		Commenced employment on: <div>Day                      Month                      Year</div>	

## 2. FIRM

Name	Area Code and Telephone:
Address where applicant will be working (street, city, province, postal code)	

## 3. TYPE OF REGISTRATION OR APPROVAL REQUESTED (SEE APPENDIX A)

## 4. APPLICABLE SECURITIES REGULATOR

**Instruction:** Check all appropriate boxes to indicate the Canadian Securities Commissions or similar authority and/or self-regulatory organizations with which the applicant is seeking registration or approval.

### SECURITIES COMMISSIONS OR SIMILAR AUTHORITIES

<input type="checkbox"/> Alberta	<input type="checkbox"/> New Brunswick	<input type="checkbox"/> Nova Scotia	<input type="checkbox"/> Prince Edward Island
<input type="checkbox"/> British Columbia	<input type="checkbox"/> Newfoundland	<input type="checkbox"/> Nunavut	<input type="checkbox"/> Quebec
<input type="checkbox"/> Manitoba	<input type="checkbox"/> Northwest Territories	<input type="checkbox"/> Ontario	<input type="checkbox"/> Saskatchewan
			<input type="checkbox"/> Yukon Territory

### SELF-REGULATORY ORGANIZATIONS

<input type="checkbox"/> The Canadian Venture Exchange	<input type="checkbox"/> The Toronto Stock Exchange
<input type="checkbox"/> Investment Dealers Association of Canada	<input type="checkbox"/> Winnipeg Commodity Exchange
<input type="checkbox"/> The Montreal Exchange	<input type="checkbox"/> Winnipeg Stock Exchange
	<input type="checkbox"/> Other (specify) _____

## 5. PERSONAL DESCRIPTION OF APPLICANT

(A)

DATE OF BIRTH Day    Month    Year			PLACE OF BIRTH City                      Province                      Country			Sex
Height	Weight	Colour of eyes	Colour of hair	Name of spouse & nature of his/her employment		
Citizenship		If <b>NOT</b> a Canadian citizen, Answer question 5(B) below.				

(B)

Are you a permanent resident?	Number of years of continuous residence in Canada	Passport Information			
		Country	Place of issue	Date of issue	Number

## 6. PHOTOGRAPH

**Instruction:** Attach two copies of a black and white or colour photograph, full face, showing a true likeness of the applicant as the applicant now appears and **taken within the last 6 months**. Photographs must measure 2" x 2", be of passport quality and bear on the reverse side the date on which the photographs were taken, **the signature of the applicant and that of the Commissioner of Oaths/Notary Public or that of an officer, director, partner or branch manager of the sponsoring firm.**

## 7. EDUCATION

(A)

Level	Name of School (state last school attended in each level where a degree or diploma was obtained)	Degree or Diploma	Year Obtained
High School or Secondary Level			
Post-Secondary, College, CEGEP or University			
Professional Education			
Other			

## (B) INDUSTRY EXAMS (SEE APPENDIX B)

(C) Have you ever applied for and been refused exemptions from any of the listed examination requirements: (If so, give particulars as an attachment). \_\_\_\_\_

## 8. EMPLOYMENT HISTORY

(A) The following information constitutes full disclosure of your business activities, including any periods of self-employment and unemployment, for 10 years immediately prior to the date of this application, excluding any summer employment while a full-time student, but including all securities or commodities industry employment during and **prior to the ten-year period**.

**Note:** If employment history does not date back 10 years immediately prior to the application date, please indicate in the space provided.

Name and address of employer	Name and title of immediate superior	Nature of employment and duties of applicant	Reasons for leaving	FROM		TO	
				mo	yr	mo	yr
PRESENT:						Present	
PREVIOUS:							

**(8A CONT'D)**

Name and address of employer	Name and title of immediate superior	Nature of employment and duties of applicant	Reasons for leaving	FROM		TO	
				mo	yr	mo	yr

(B) Have you ever been dismissed by an employer (for cause)? \_\_\_\_\_  
 (If so give particulars as an attachment).

\_\_\_\_\_

**9. RESIDENTIAL HISTORY** (give all home addresses for the past 10 years)

Include street, city, province & postal code	FROM		TO	
	mo	yr	mo	yr
PRESENT			Present	
PREVIOUS				

**10. REFERENCES**

Give three names as references, excluding relatives and persons associated with the sponsoring firm. References must include a bank or trust company at which you have an account (give account number).

Name	Firm Name	Business Address (with postal code) and Telephone (with area code)	Occupation

Account Number at reference bank or trust company: \_\_\_\_\_

*Note: Account number need not be given if this form is accompanied by a reference from a bank or trust company with which the applicant has an account.*

ANSWER "YES" OR "NO" TO EACH OF QUESTIONS 11 TO 20 INCLUSIVE. IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES", COMPLETE DETAILS MUST BE ATTACHED BY WAY OF EXHIBIT.

**11. CHANGE OF NAME**

- A) Have you ever had a change of name resulting from marriage, divorce, court order or any other process? (If so give particulars including appropriate dates and documentation i.e. marriage certificate.)

- B) Have you ever been known under any other name or have you ever had, used, operated under, or carried on business under any name other than the name mentioned in Question 1 of this form? (If so give particulars including appropriate dates.)

**12. PRIOR REGISTRATION OR LICENSING**

- A) Are you now or have you ever been registered or licensed, or applied for registration or a licence in any capacity under any act or regulation thereof, regulating trading in securities, commodities or commodity futures contracts of any province, territory, state or country? List the securities regulatory authorities and/or self-regulatory organizations which granted registration, the type of registration held, dates of registration and name of company through which registration was granted. State whether the registration is currently in effect.

- B) Are you now or have you ever been registered or licensed or applied for registration or a licence as a partner, shareholder, director or officer of any company or of a partnership which has been registered or licensed or is now registered or licensed (except as an issuer if you are or have been solely a shareholder) in any capacity under any act or regulation thereof, regulating trading in securities, commodities or commodity futures contracts of any province, territory, state or country? List the securities regulatory authorities and/or self-regulatory organizations which granted registration, the type of registration held, dates of registration and name of company or partnership through which registration was granted. State whether the registration is currently in effect.

- C) Are you now or have you ever been registered or licensed, or applied for registration or a licence, under any legislation which requires registration or licensing to deal with the public, in any capacity other than trading in securities, commodities or commodity futures contracts in any province, territory, state or country? List all authorities which granted registration or licence, the type of registration or licence held and dates of registration or licence. State whether the registration or licence is currently in effect.

**QUESTIONS 13 TO 18 INSTRUCTION:** In answering Questions 13 to 18, and particularly Question 15, you may need assistance from an authorized officer for the sponsoring firm or from a legal adviser. Full details are required as attachments in respect of any question to which the applicant answers "yes". These details must include the circumstances, the relevant dates, the names of the parties involved and the final determination if known.

### **13. REFUSAL, SUSPENSION, CANCELLATION OR DISCIPLINARY ACTION**

A) Have you ever been refused registration or a licence, or has your registration or licence been suspended or cancelled, under any act or regulation thereof, regulating trading in securities, commodities or commodity futures contracts of any province, territory, state or country? \_\_\_\_\_

B) Are you now or have you ever been a partner, shareholder, director or officer of a company or of a partnership which has, during the time of your association with it, been refused registration (except a registration as an issuer if you are or have been solely a shareholder) or a licence, or whose registration has been suspended or cancelled under any act, or regulation thereof, regulating trading in securities, commodities or commodity futures contracts of any province, territory, state or country? \_\_\_\_\_

C) Have you ever been refused registration or a licence, or has your registration or licence been suspended or cancelled, under any legislation which requires registration or licensing to deal with the public in any capacity, other than trading in securities, commodities or commodity futures contracts in any province, territory, state or country? \_\_\_\_\_

D) Have you been denied the benefit of any exemption from registration or licensing provided by any act or regulation thereof regulating trading in securities, commodities or any commodity futures contracts of any province, territory, state or country? \_\_\_\_\_

E) Has any prior or current registration or licensing to deal or trade in securities, commodities or commodity futures contracts held by you or any partnership or company of which you were at the time of such event a partner, officer or director or holder of voting securities carrying more than 5 percent of the votes carried by all outstanding voting securities ever been the subject of disciplinary action undertaken by any authority regulating or supervising trading in securities, commodities, or commodity futures contracts? \_\_\_\_\_

### **14. SELF-REGULATORY ORGANIZATIONS**

Have you or has any partnership or company of which you are or were at the time of such event a partner, director, officer or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities:

A) Ever been a member of any stock exchange, commodities exchange, commodity futures exchange, association of investment dealers, investment bankers, brokers, broker-dealers, mutual fund dealers, commodity futures dealers, investment counsel, other professional association or any similar organization in any province, territory, state or country? \_\_\_\_\_

B) Ever been refused registration or licensing or approval for membership or approval in any other capacity by/in any of the institutions or associations described in Question 14A? \_\_\_\_\_

C) Ever been the subject of disciplinary action undertaken by any authority as described in question 14A? \_\_\_\_\_

## **15. OFFENCES UNDER THE LAW**

**INSTRUCTION:** Offences under such federal statutes as the *Income Tax Act (Canada)* and the *Immigration Act (Canada)* constitute criminal offences and must be disclosed when answering this question. It should be noted that pleas or findings of guilt for impaired driving are *Criminal Code (Canada)* matters and must be disclosed. Where you have pleaded guilty or been found guilty of an offence, such offence must be reported even though an absolute or conditional discharge has been granted.

You are not required to disclose any offence for which a pardon has been granted under the *Criminal Records Act (Canada)* and such pardon has not been revoked. Under such circumstances, the appropriate response would be: "NO".

It is considered inappropriate to omit reference to an offence under any statute other than the *Young Offenders Act (Canada)*. Wrongful omission of an offence may be treated as a non-disclosure of material information.

If you are in doubt as to previous dealings you have had with law enforcement agencies and the applicability of this question with respect to such encounters, you should obtain the advice of an authorized officer of your sponsor or a legal adviser.

### **A) Past Offences Involving Securities or Commodities ---**

Have you ever been charged with or pleaded guilty or been found guilty under any law of any province, territory, state or country of any offence relating to trading in securities, commodities, commodity futures contracts or options or with the theft thereof, or with any related offence, or been a party to any proceedings taken on account of fraud arising out of any trade in or advice in respect thereof? \_\_\_\_\_

### **B) Past Offences Involving Other Criminal Offences or Contraventions ---**

Have you ever pleaded guilty or been found guilty under any law of any province, territory, state or country for contraventions or other criminal offences not noted in A) above? \_\_\_\_\_

### **C) Current Charges or Indictments ---**

Are you currently the subject of a charge or indictment under any law of any province, territory, state or country for contraventions, criminal offences or other conduct of the type described in A) or B) above (see also instructions above)? \_\_\_\_\_

### **D) Partnership or Company Offences or Current Charges or Indictments---**

Has any partnership or company of which you are or were at the time of such event a partner, officer, director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities, ever pleaded guilty or been found guilty, or is any such partnership or company currently the subject of a charge or indictment, under any law of any province, territory, state or country for contraventions, criminal offences or other conduct of the type described in A) or B) above (see also instructions above)? \_\_\_\_\_

## **16. CIVIL PROCEEDINGS and ALTERNATIVE DISPUTE RESOLUTION**

Has any claim been made successfully or, to your knowledge, is any claim pending in any civil or alternative dispute resolution proceedings before a court or other tribunal in any province, territory, state or country?

### **A) Against you? \_\_\_\_\_**

B) Against any partnership or company of which you are or were at the time of such event, or at the time of such event, or at the time such proceedings were commenced, a partner, director, officer or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities? \_\_\_\_\_

## 17. BANKRUPTCY

A) Under the law of any province, territory, state or country have you ever:

(a) been declared bankrupt or made a voluntary assignment in bankruptcy? \_\_\_\_\_

(b) made a proposal under any legislation relating to bankruptcy or insolvency? \_\_\_\_\_

(c) been subject to or instituted any proceedings, arrangement or compromise with creditors including, without limitation, produced a declaration under the Quebec Voluntary Deposit of Salary Wages Law or had a receiver and/or manager appointed to hold your assets? \_\_\_\_\_

If yes, and if applicable, attach copy of any discharge, release or document with similar effect.

B) Has any partnership or corporation of which you are or were at the time of such event a partner, director, officer or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities ever:

(a) been declared bankrupt or made a voluntary assignment in bankruptcy? \_\_\_\_\_

(b) made a proposal under any legislation relating to bankruptcy or insolvency? \_\_\_\_\_

(c) been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver and/or manager appointed to hold its assets? \_\_\_\_\_

(d) been subject to or instituted any proceedings, under any legislation-relating to the winding up, dissolution or companies' creditors arrangements? \_\_\_\_\_

If yes, and if applicable, attach copy of any discharge, release or document with similar effect.

## 18. JUDGEMENT OR GARNISHMENT

Has any judgement or garnishment ever been rendered or is any judgement or garnishment outstanding, in any civil court in any province, state or country?

A) Against you? \_\_\_\_\_

B) Against any partnership or corporation of which you are or were at the time of such event a partner, director, officer or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities? \_\_\_\_\_

## 19. SURETY BOND OR FIDELITY BOND

A) Have you ever applied for a surety bond or fidelity bond and been refused? \_\_\_\_\_

If yes, attach name and address of bonding company, and when and why the bond was refused.

B) Are you presently bonded? \_\_\_\_\_

## 20. BUSINESS ACTIVITIES

A) Will you be actively engaged in the business of the firm with which you are now applying and devote the major portion of your time thereto? \_\_\_\_\_

**B)** Are you engaged in any other business or have any other employment for gain except your occupation with the firm with which you are now applying? \_\_\_\_\_

If so, attach full details including the full name and address of the business, the nature of the business, your title or position and the amount of time you devote to the business.

**C)** Are you a partner, director, officer, shareholder or other contributor of capital of a partnership or of a company having as its principal business that of a broker, dealer or adviser in securities, commodities, commodity futures contracts or options other than the firm with which you are now applying: If so, attach full details. \_\_\_\_\_

## **21. INTEREST IN SPONSORING FIRM**

**A)** State the number, value, class and percentage of shares or the amount of partnership interest you own or propose to acquire upon approval. If acquiring shares upon approval, state source, i.e. treasury shares, or if upon transfer, state name of transferor.

\_\_\_\_\_

**B)** State the value of subordinated debentures or bonds of the firm to be held by you or any other subordinated loan to be made by you to the firm.

\_\_\_\_\_

**C)** Are you or will you upon approval be the beneficial owner of the shares, bonds, debentures, partnership interest or other notes held by you? If no, state name, residential address and occupation of the beneficial owner.

\_\_\_\_\_

**FILING OF ANY FALSE INFORMATION OR FAILURE TO DISCLOSE FULL INFORMATION REQUIRED BY OR ON THIS APPLICATION MAY RESULT IN ITS REJECTION OR IN DISCIPLINARY ACTION TAKEN AGAINST THE APPLICANT AND /OR THE SPONSORING FIRM WITHIN THE PROVISIONS OF THE APPLICABLE SECURITIES AND/OR COMMODITY FURTURES LEGISLATION, REGULATIONS AND POLICY STATEMENTS OF THE SECURITIES REGULATORY AUTHORITIES AND WITHIN THE TERMS OF THE BY-LAWS, RULINGS, RULES AND/OR REGULATIONS OF ANY ONE OF THE SELF-REGULATORY ORGANIZATIONS TO WHICH THIS APPLICATION IS SUBMITTED, OR MAY RESULT IN A REFUSAL TO REGISTER THE APPLICANT.**

The undersigned hereby certify that the foregoing statements are true and correct to the best of our knowledge, information and belief and hereby undertake to notify the self-regulatory organization in writing of any material change therein as prescribed by any by-law or rule of the respective self-regulatory organizations.

We agree to be bound by and to observe and comply with them as they are from time to time amended or supplemented, and we agree to keep ourselves fully informed about them as so amended and supplemented. We submit to the jurisdiction of the self-regulatory organizations and, wherever applicable, the Governors, Directors and committees thereof, and we agree that any approval granted pursuant to this application may be revoked, terminated or suspended at any time in accordance with the then applicable by-laws, rulings, rules and regulations. In the event of any such revocation or termination, the undersigned applicant agrees forthwith to terminate his/her association with the undersigned sponsoring firm and thereafter not to accept employment with or perform services of any kind for any member firm, in each case if and to the extent provided in the then applicable by-laws, rulings, rules and regulations of the self-regulatory organizations. Our obligations above are joint and several.

We agree to the transfer of this application form, without amendment, to another of the self-regulatory organizations listed in Question 4 of this application form in the event that at some time in the future the undersigned applicant applies to such other self-regulatory organization.

The undersigned applicant has discussed the questions in this application and in particular Questions 15 and 16 with an officer or branch manager of this firm. The undersigned authorized officer is satisfied that the applicant fully understands the questions, and further certifies on behalf of the sponsoring firm that the applicant will be engaged as registered or approved.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Name of Sponsoring Firm)

# AFFIDAVIT

I, the undersigned applicant, do hereby depose and state that I have read and understand the questions in this application form as well as the answers made by myself thereto and the Caution set out above, and that the statements of fact made therein and in the attachments, if any, are true.

)  
)  
)  
)  
)  
Signature of Deponent/Applicant  
)  
)  
)  
)  
)  
)

**\*The provinces of Alberta, Saskatchewan and Manitoba require this affidavit to be sworn before a notary public or barrister or solicitor where the applicant is outside the province at the time of application. It is an offence under applicable Canadian securities and commodity futures legislation to file an application which contains a statement that, at the time and in light of the circumstances in which it is made, is false or misleading, or which fails to state any material fact.**

## APPENDIX A ( QUESTION 3 )

### TYPE OF REGISTRATION OR APPROVAL REQUESTED

**INSTRUCTION:** Check ALL applicable boxes to indicate the registration or approval requested. The "Types of Registration or Approval Requested" have the meaning attributed to them in the applicable securities or, commodity legislation, or regulation and in by-laws, rules and regulations of exchanges, the Investment Dealers Association of Canada and other self-regulatory organizations. Applicants filing for restricted registration should file under OTHER, specifying the nature of the restricted registration for which approval is sought.

#### SALES/TRADING:

- ☐ Investment Advisor (British Columbia only)
- ☐ Registered Mutual Funds Representative
- ☐ Registered Representative (Retail)
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Futures Options
- ☐ Registered Representative (Non-Retail)
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Futures Options
- ☐ Investment Representative (Retail)
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Futures Options
- ☐ Investment Representative (Non-Retail)
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Futures Options
- ☐ Associate Portfolio Manager
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Future Options
- ☐ Portfolio Manager
  - ☐ Securities
  - ☐ Security Options
  - ☐ Commodity Future Options
- ☐ Trader
  - ☐ CATS
  - ☐ TradeCDNX
  - ☐ Security Options (Registered Representative - Restricted)
  - ☐ Commodity Future Options (Floor Trader)
  - ☐ Independent
    - ☐ Commodity Options Trader
    - ☐ Commodity Floor Trader
  - ☐ Individual Member
- ☐ Scholarship Plans
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_

#### OTHER:

- ☐ Partner
- ☐ Director
  - ☐ Industry
  - ☐ Non-Industry
- ☐ Officer (specify title) \_\_\_\_\_
  - ☐ Trading
    - ☐ Retail
    - ☐ Non-Retail
  - ☐ Non-Trading
- ☐ Assistant Branch Manager
- ☐ Branch Manager
- ☐ Co-Branch Manager
- ☐ Sales Manager
- ☐ Futures Contract Options Supervisor
- ☐ Designated Registered Options Principal
- ☐ Alternate Registered Options Principal
- ☐ Designated Registered Futures Principal
- ☐ Alternate Registered Futures Principal
- ☐ Designated Registered Futures Option Principal
- ☐ Alternate Registered Futures Option Principal
- ☐ Ultimate Designated Person
- ☐ Alternate Designated Person
- ☐ Industry Investor
- ☐ Non-Industry Investor
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_
- ☐ Other (specify) \_\_\_\_\_

## APPENDIX B – INDUSTRY EXAMS ( QUESTION 7 (B) )

Have you successfully completed:

	<u>YES</u>	<u>NO</u>	<u>EXEMPT *</u>	<u>DATE COMPLETED</u>
Canadian Securities Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Examination based on Manual for Registered Representatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
The Conduct and Practices Handbook Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Partners/Directors/Officers Qualifying Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Investment Finance (Course 2)				_____
Part I	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Part II	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Chartered Financial Analyst Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Qualifying Examination for Registered Options Principal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Options Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Investment Funds Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
National Commodity Futures Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Commodity Futures Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Futures Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Part I	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Part II	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Commodity Supervisors' Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Branch Managers' Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Derivatives Fundamentals Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Options Licensing Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Futures Licensing Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Professional Financial Planning Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Effective Management in the Securities Industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Investment Management Techniques Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Canadian Investment Management				_____
Part I	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Part II	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Wealth Management Techniques Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Fundamentals of Portfolio Management Course	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
ACE Trader Exam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
VCT Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
CATS Exam				_____
Oral	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Written	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Traders Training Course (CSI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
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Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

\*If you have been granted an exemption, attach full particulars.

# INVESTMENT DEALERS ASSOCIATION

## FINES AND COSTS IMPOSED IN DISCIPLINARY ACTIONS

1997-2000

	1997	1998	1999	As at August 31, 2000
<b>Individuals</b>				
- Fines	\$187,500	\$254,000	\$367,000	\$779,000
- Costs	58,500	49,500	104,200	96,225
- Disgorgement	39,865	1,272	142,658	14,859
<b>Total</b>	<b>\$285,865</b>	<b>\$304,772</b>	<b>\$613,858</b>	<b>\$890,084</b>

Number of Formal Hearings Completed	26	22	30*	25*
Average Amount of Fine Imposed	\$10,995	\$13,854	\$20,462	\$35,603

- Warning letters	-	30	67	55
- Suspensions	6	4	6	7
- Conditions On Registration	27	22	31	23
- Permanent Bars	5	1	6	4

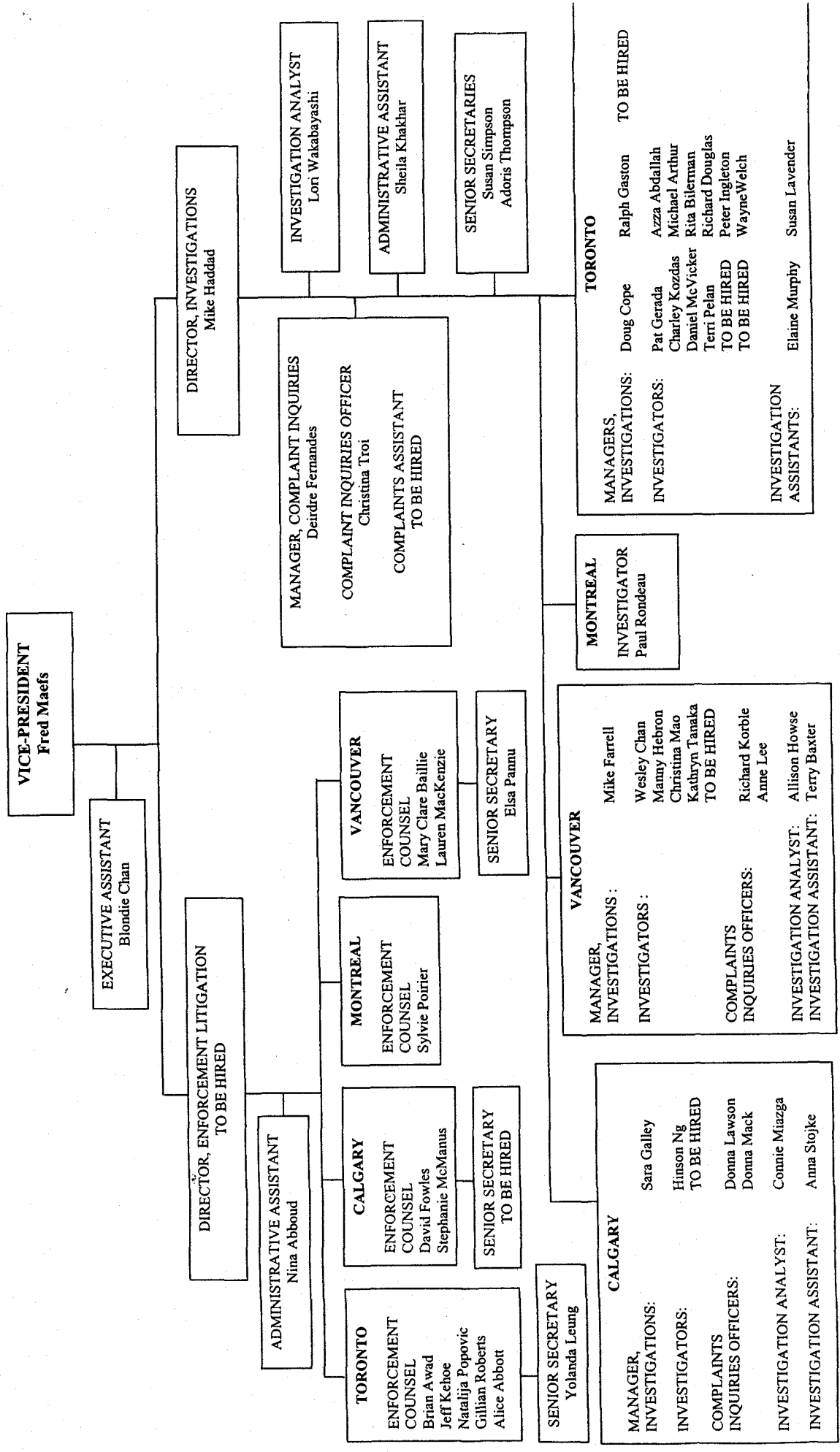
<b>Member Firms</b>				
- Fines	\$130,000	\$392,000	\$10,000	\$242,500
- Costs	23,450	29,500	3,000	34,860
- Disgorgement	-	-	-	13,736
<b>Total</b>	<b>\$153,450</b>	<b>\$421,500</b>	<b>\$13,000</b>	<b>\$291,096</b>

Number of Formal Hearings Completed	7	5	1*	8*
Average Amount of Fine Imposed	\$21,921	\$84,300	\$13,000	\$36,387

\* numerous proceedings initiated but remain in litigation

# INVESTMENT DEALERS ASSOCIATION ENFORCEMENT DIVISION ORGANIZATION CHART

September 15, 2000



# IDA REPORT

A newsletter published by the Investment Dealers Association of Canada

Summer 2000 Edition

## The Chair's Address

Ladies and gentlemen, Mesdames et Messieurs, it is an honour to be the first Chair of the Association of the new millennium.

I believe the next twelve months will provide the opportunity to make a special contribution to the securities industry and capital markets. Member firms too will be faced with challenges, but not without opportunities, to better serve clients in the coming year.

I would explore some key themes, which I believe will be the focus for our Association in the coming year. They concern trading systems, promotion of securities business, technology, the opportunities for recognition of our organization in Québec and our educational mandate.

### **A Future Fraught with Challenges**

The Federal Government yesterday released draft legislation reforming the regulation of federal financial institutions. The legislation will have important implications for the securities industry because it will spell out the new conditions under which financial institutions will be permitted to compete and structure themselves going forward. The Association and its Members must be prepared to respond creatively to the new financial landscape which will soon emerge.

One of the IDA's mandates, however, will not change. That is our goal to improve the efficiency and liquidity of the Canadian securities market. The CSA Proposals for structural and regulatory reform of domestic markets will have a significant impact on market liquidity and the Association will work with the CSA to implement these proposals.

The central plank of the CSA Proposal is to integrate stock exchanges and other liquidity pools to facilitate market transparency and to create a linked system for order routing to provide best execution across competing markets. It also establishes a set of basic trading principles and core trading

rules, notably the requirement for best execution, that would apply equally in all competing markets. The regime promotes efficient markets through an over-arching regulatory framework to ensure market integrity.

The IDA, however, has expressed concerns that the proposed framework throws up regulatory conflicts of interest since ATSS would be required to delegate the regulation of their activities to competing markets. As a result, the IDA recommended that an independent self-regulatory body be created with responsibility for market regulation. This structure would mitigate conflicts of interest in market regulation.

*Continued...*

### **Inside this Issue:**

The Chair's Address .....	1
The President's Report .....	4
The IDA Welcomes .....	6
Suitability Requirements .....	7
Representing Members' Interests .....	8
Regional Dealers Forum 2000 .....	10
Regulatory Update .....	11
Conference Highlights .....	12
The District Report .....	16
Enforcement: Disciplinary Decisions .....	19
MFDA Update .....	23



Incoming Chair of the Board of Directors, Jacques Ménard (left), is welcomed by Chuck Winograd, 1999-2000 Chair. Jacques began his one-year term on June 14<sup>th</sup>, 2000

The CSA will release a second draft of their proposals for market reform sometime this summer. Although the IDA recommendation for an independent self-regulatory body is unlikely, the TSE has made modifications to its original proposal to address the conflict of interest problem. Market regulation will now be housed within a separate affiliate corporation, with management reporting to an independent board of directors representative of the TSE, the IDA and competing ATSS. We have encouraged the CDN stock exchange to consider partnering with the TSE affiliate to create a joint regulatory body that could be an affiliate of both stock exchanges. These discussions are ongoing.

### ***Development of an Integrated Disclosure System***

Another issue at the forefront of CSA reforms is the development of an integrated disclosure system (IDS). The proposed system will improve the quality and timeliness of corporate disclosure, which will bolster confidence in the marketplace. The IDS will provide the additional benefit of giving small firms the opportunity to raise capital in public markets on a timely basis.

I also note the IDA will play a pivotal role in implementing the CSA Proposal for debt markets. The CanPX transparency system, which provides real-time prices for debt securities, will

likely be designated the Data Consolidator for fixed income markets.

### ***Promoting Capital Formation and Growth***

A second challenge facing the IDA is to promote capital formation by advocating tax reductions and incentives for productive investment. In his 2000 Budget, the Minister of Finance made selective tax cuts at the personal and corporate levels, but much more needs to be done.

We will advocate for a further reduction in the capital gains exemption, and continue to press for elimination of capital gains tax on equity investments in small business and high-tech companies. Both these sectors deserve special tax treatment in view of their important contribution to employment and economic growth. While middle-income earners have received a tax break in the last budget, we will continue to argue for lower tax rates to achieve a fair, more effective and more competitive personal tax system.

We will also continue to advocate higher RRSP contributions to boost savings and help Canadians prepare more adequately for their retirement. Higher annual contributions also bring the Canadian system more in line with other important foreign jurisdictions such as the US and the UK.

### ***Market Integrity Cannot Be Compromised***

The third and most important challenge for the IDA is our role in ensuring the integrity of the Canadian securities industry. Many of our initiatives and accomplishments have already been discussed. I would like to refer to a couple which demonstrate how practitioner input brings strength to the self-regulatory process.

Our active participation in the Crawford Committee to review and recommend changes to regulations governing financial analysts is an example of how the IDA stays at the forefront of the regulatory agenda.

The challenges arising from technology advances are significant. These advances have led to sophisticated encrypted Internet portals with Internet access to all clients and providing special interactive features such as trading capabilities. The challenge for regulators is to ensure investors are protected and dealers carry out their fiduciary responsibilities to clients. The recent experience suggests that regulatory accommodation with developing systems will evolve slowly, creating significant inertia to technology advancement.

The IDA provides a forum where Members can share their



Outgoing Chair Charles Winograd delivers his report at the Annual General Meeting.

expertise to evaluate the impact and implications of cutting-edge technology on the securities industry. The rapid growth of the Internet and its integration in financial decision-making and transactional flow, coupled with concerns about third party private networks, has moved the industry to the Internet technology. Firms are rapidly developing online capability, independently and in conjunction with service providers, to provide financial products and services and pricing, and client specific portfolio information. Further, dealers are developing capability for online securities execution and advice — offering a seamless product line from unsolicited client trading to trading/financial advice, to portfolio management services.

## Québec

Now permit me to raise several issues that are close to home for me. The Conference theme is “Celebrating our History”. That history is particularly strong in Québec, where many of our Member firms were established and first played a role in the Association.

The IDA plays an important self-regulatory role in Québec now, as it has throughout its history. Like everywhere else, our authority and responsibilities have been as real as if we had been officially recognized. Further, we are grandfathered as a SRO under the Québec statute, unlike other jurisdictions. In the past several years, however, the IDA has been recognized by most provinces that have the statutory authority to do so. This has not happened in Québec.

An important objective during my term as Chair of the IDA will be to work with Government to achieve that official recognition status. Recognition is justified by the significant presence of the industry and the Association in Québec, the

IDA's long history of responsible regulation and the respected and independent role that has been played by the Québec District Council.

Recognition of the Association will also enhance the QSC's supervisory role and improve the prospect for greater harmonization of securities regulation across the country.

The regulation of securities-related activities in Québec is, to some extent, evolving in a different construct from that in the rest of the country. For example, the Financial Services Board regulates mutual fund salespeople outside the IDA. This constitutes direct regulation, as opposed to the self-regulatory model for the mutual fund industry in the rest of the country through the newly created Mutual Fund Dealers Association. I believe that government should encourage harmonization of structure and policy to promote efficient and liquid markets.

The Québec government announced last month the establishment of NASDAQ Canada in Montreal. We anticipate that the NASDAQ Canada market will evolve over time and, together with the restructured Montreal Exchange, contribute to building a more dynamic financial sector and liquid capital markets in Québec. I believe it is crucial that NASDAQ Canada be subject to recent CSA proposals to reform the structure and regulation of domestic equity markets. The integration of the NASDAQ Canada market into the domestic market framework will benefit Canadian investors by enabling them to access the best prices for Canadian equities interlisted in Canadian stock exchanges and NASDAQ Canada.

A final note on the ongoing role of our affiliate, the Canadian Securities Institute. Given the ever increasing challenges of our profession, our industry must of course continue to uphold the highest standards of proficiency for our Members. The same holds true of the CSI's educational mandate vis a vis the increasingly sophisticated investing public and the community at large. In the highly competitive E-learning world, the CSI must be permitted to compete and fulfill its mandate by fully utilizing the new network technology and communication platforms that are out there. We will be working with the management of the Institute in order to best achieve this goal and see the Institute develop to its full potential on behalf of the industry and of the investing public.

These, Ladies and Gentlemen, are some of the key priorities which the IDA Board will be addressing going forward and we anticipate the Membership's active contribution to the activities of our Association in the year ahead.

Merci beaucoup Mesdames et Messieurs. ☐

L. Jacques Ménard  
Chair 2000-2001

*Annual Meeting, June 14th, 2000  
Toronto, Ontario*

# President's Report: 1999-2000

It is my task to review our activities last year, activities which demonstrate the powerful synergy created by bringing industry expertise to bear on our regulatory responsibilities and on policy issues affecting the capital markets. I will not dwell on those which our Chairman has described in his address.

Our Association continues to build on its historical mandate, as dramatic changes in technology, globalization, and market structure throw up challenges and opportunities to our industry.

First our regulatory initiatives.

One of the key recommendations that flowed out of last year's strategic review was the creation of a Regulatory Review Committee of the Board. This Committee, chaired by Jacques Ménard, conducts an intensive review of SRO responsibilities and reports to the Board of Directors.

A key challenge and accomplishment was the transfer of CDN X Member Regulation responsibilities to the IDA. As a result of the merger between the VSE and ASE to form CDN X, Members decided that the Member Regulation function, formerly handled by the two Exchanges, should be transferred to the IDA. That transfer increased the firms in the IDA audit jurisdiction from 140 to 164, encompassing almost 98% of the SRO industry by capital and business activity. We anticipate further growth, when SRO membership becomes mandatory in British Columbia, Ontario and Saskatchewan. At that point, IDA Membership will encompass virtually the entire securities dealer community.

Significant policy initiatives were brought to a conclusion with the approval of By-laws relating to bank letters, the cash account rule and continuing education. These initiatives relate to our responsibilities for the financial integrity and proficiency standards in the industry. In addition, our ongoing work on the Year 2000 was successfully concluded, a classic example of a task with no upside, but enormous downside.

Last year, the Alberta Securities Commission recognized the IDA as a SRO and we understand that recognition in Saskatchewan is imminent. We are heartened by the encouraging attitude of the Québec Securities Commission and the Government of Québec regarding prospects for



IDA President and CEO, Joseph Oliver, delivers his report to Association Members at the Annual Meeting held in Toronto, Ontario.

official recognition of the IDA. We were also the subject of a significant oversight review by the Ontario Securities Commission, of some 1200 hours. Preliminary results indicate that the OSC is, in general, satisfied with our work. Also, there was significant work done with the BCSC, especially in regard to the assumption of CDN X responsibilities.

The IDA's regulatory presence in Western Canada was significantly enhanced with the addition of Enforcement Counsel, Complaints Inquiries Officers and Compliance Officers in the Vancouver and Calgary offices.

During the year, we completed, on a timely basis, all required work under the Canadian Investor Protection Fund (CIPF) Minimum Standards. Unfortunately, we had our first event in 15 years resulting in claims by clients against the Canadian Investor Protection Fund. I should quickly add that those claims are unlikely to be significant for the size of the Fund.

I would now like to comment on our Trade Association and Capital Markets activities, reflecting our role as a representative and responsive association, attuned to the diversity of our Membership, reflective of regional interests and providing added value to our Members.

Our Association represents the interests of our Members in respect to fiscal and monetary issues with the Federal and provincial governments. As well, we addressed a number of key market issues with the Canadian Securities Administrators. For example, our Equity Trading Committee, comprised of the most senior equity people in the industry, examined the issue of market regulation in the context of the demutualization of the exchanges and the imminent arrival of alternative trading systems. Their report, which was submitted to the CSA, was an important contribution to the key issues that regulators and market participants must confront as we move to a dramatically different global market place for trading.

The IDA contributed to the Committee on Cross-Border Issues that published a handout on federal and state securities regulations for firms dealing in the US. We are also actively involved with the Crawford Committee on Analysts Standards, which plans to release its Interim Report later this summer.

We are pleased that the CSA has agreed with our request to remove suitability requirements for discount brokers. We are working to create the confidence necessary for regulators to remove the requirement at full service firms, when no advice is given on the transaction.

Reference has been made elsewhere to other regulatory issues we have addressed. They include financial planning proficiency, the MJDS system, the roll back of the Federal Government proposal for thin capitalization rules, the corporate veil issue and the development of trading rules for fixed income, the structure of Government of Canada treasury bills and bonds, and, of course, SEC permission for brokers to deal with RRSP accounts in the US.

The list goes on, but the point is clear. Your Association represents Member interests in a broad range of issues to governments and regulators in a common search for a regulatory structure and policy framework that enhance investor protection and foster a competitive marketplace.

We are also implementing a key recommendation of our strategic review—to reach out to our Members and listen to their concerns. Regional Dealer groups have been established in each of the regions across the country. The Trade Association has visited 90 Member firms in their head office, over half of the Membership. Other areas of activity include a complete review of our Distinction Program, the creation of guidelines for US cross-border transactions and the roll-out of the Arbitration Program across the country.

A regional office was opened in Halifax in February of 2000

to better serve the needs of the Members in Atlantic Canada. The responsibilities of the Regional Director in the Pacific Region were enhanced to respond to the needs of our Members and the requirements of the Commission for a senior representative who can represent the IDA with respect to regulatory issues.


Member Services are being identified, where the combined purchasing power of the Membership can create substantial cost savings. A major revision of the Security Industry Benefits Plan is underway which should result in more flexible plans, cost reduction and increased participation.

We have also accomplished a number of operational measures, designed to improve the efficiency of the organization and making it more cost-effective, including the introduction of zero-based budgeting.

Although Canada's capital markets are relatively small, your Association also plays an important role internationally, for the past four years chairing the SRO Consultative Committee of IOSCO (International Organization of Securities Commissions). This committee is comprised of 50 SROs and futures and stock exchanges from around the world.

In closing, I want to express my appreciation to **Chuck Winograd**. His leadership and support on a wide range of complex and sensitive issues was extended with good humour and grace, in spite of heavy responsibilities at his firm. I am looking forward to working with **Jacques Ménard** as he assumes the Chairmanship. A key strength of our Association is the ability to attract senior industry professionals with exceptional backgrounds, who are willing to devote their time and experience, on behalf of the industry, other market participants and investors.

Finally, I want to thank the hundreds of industry professionals who have devoted so generously of their time to our Board, District Councils and committees. Your contribution provides the input that justifies a self-regulatory approach to the securities industry by assuring that our policies and public positions are of high quality, principled and broadly representative of the entire Membership. Your contribution is essential to the continued vitality of the Association and its ability to pursue our mission to protect the integrity and enhance the competitiveness of the Canadian capital markets.

Mr. Chairman, this completes my report. 

**Joseph J. Oliver**  
President and CEO

*Annual Meeting, June 14, 2000  
Toronto, Ontario*

# The IDA Welcomes...

## **L. Jacques Ménard, C.M.**



**L. Jacques Ménard**  
2000-2001 Chair,  
Board of Directors

Jacques Ménard is President of the Bank of Montreal Group of Companies, Québec and Deputy Chairman of its corporate and investment banking affiliate, BMO Nesbitt Burns. Mr. Ménard is also a member of the firm's Executive Committee and Managing Director of the firm's operations in Québec. Prior to its merger in the Summer of '94, he was Chairman of the Executive Committee of Burns Fry, one of the company's predecessor firms.

He holds a Bachelor of Arts degree from Collège Sainte-Marie (1966), a Bachelor of Commerce, Honours Economics, from Loyola College in Montréal (1967) and an M.B.A. from the University of Western Ontario (1970).

Mr. Ménard is currently Chairman of the Board of Hydro-Québec, Vice-Chairman of Gaz Métropolitain, Director of Alliance Forest Products Inc., and Director of the Macdonald Stewart Foundation. He is a Board Associate of the Canadian Policy Research Networks Inc. and a Governor of the Québec M.B.A. Association which named him "M.B.A. of the Year" in

1990. He is also on the International Advisory Board of l'École des Hautes études commerciales, the University of Montreal's business school. Concordia's University, Commerce and Administration Faculty presented him in 1993 with its Award of Distinction for his professional accomplishments and outstanding service to the community. In February 2000, he received the McGill University Faculty of Management Achievement Award for his professional and community achievements.

He is also Chairman of the Investment Dealers Association for 2000-2001. A past Chairman of the Montréal Exchange, he has also served over the years as a director of a number of industry organizations, such as the Trans-Canada Options Corporation which he chaired.

Mr. Ménard has also been involved in a number of economic, social and cultural organizations in the Montréal community. Amongst others, he is a past Chairman and President of the Board of Trade of Metropolitan Montréal and is also a past member of the Economic Council of Canada. He served as Director of Centraide of Greater Montréal for several years and was Co-Chairman of its fund raising campaign in 1992. He is also a past President of l'Ordre des Jeux du Québec.

Mr. Ménard is a Member of the Order of Canada.

Born in Chicoutimi, Québec, on January 29, 1946, he is married to Marie José Ratelle. They have two children, Louis-Simon and Anne-Valérie.

## **William D. Packham**



**William D. Packham**  
2000-2001 Vice-Chair,  
Board of Directors

As President & Chief Operating Officer, William D. Packham chairs the Executive Management Committee of Merrill Lynch Canada Inc., and also leads the firm's private client business. He also serves as the Regional Business Executive for Merrill Lynch's International Private Client Group, representing the private client interests for Merrill Lynch Canada.

Mr. Packham assumed his current role in August 1998, following the acquisition by

Merrill Lynch of Midland Walwyn Capital Inc. At the firm's predecessor company, Mr. Packham was appointed President

in 1995 and Chief Operating Officer in 1991. Since joining the securities business in 1981, Mr. Packham has held progressively more senior roles spanning a broad range of activities. His current focus is on managing the strategic direction of the Company's Private Client business in Canada as the Regional Business Executive within the Company's International Private Client Group.

He has served on various industry boards and is currently Vice-Chair of the Investment Dealers Association of Canada (IDA) and a Member of the Board of Directors. Among his other many volunteer interests, Mr. Packham is a Director of the University of Waterloo Foundation, and also serves as Governor of Junior Achievement of Canada.

A native of Toronto, Mr. Packham was born in 1955. He graduated from the University of Waterloo in 1978 with a Bachelor of Mathematics Degree. He qualified as a Chartered Accountant in 1979.

# Suitability Requirements

## Background

On April 10<sup>th</sup>, the Canadian Securities Administrators (CSA) issued a press release announcing that they were prepared to grant relief from the suitability provision for discount brokers and those IDA Member firms that create separate business units. Discount brokers are now submitting applications for relief to the CSA.

In response to this initiative, the IDA's Full-Service Brokers Suitability Sub-Committee was given the mandate of drafting a proposal for relief from suitability requirements for full-service Members. The Chairs of the District Councils and the Regional Dealers Committee, together with the Full-Service Brokers Suitability Sub-Committee, met to address this issue, and the decision was made that the Sub-Committee's proposal for relief would include the development of a model for suitability relief based upon the US system.

## Rationale for Relief

Although the Association recognizes the importance of the suitability requirement in securities regulation in Canada, there are fundamental changes underway in the industry today to which regulators and self-regulators must respond.

Clients' needs are changing, as the investing public increasingly turns to on-line trading. It is clear that a growing segment of the investing public wants the choice to trade independently, without requesting or paying for advice.

Moreover, the industry is rapidly becoming globalised. There is, increasingly, only one world securities market, and a Canadian suitability requirement that differs significantly from US regulation will disadvantage Canadian firms and their clients in the global marketplace.

The Association also acknowledges the requirement to ensure that regulations and policies are applied consistently and fairly to all Members and do not provide business advantages to some and obstacles to others. The CSA's suitability relief (which requires brokerage firms to create separate divisions in order to provide clients with the opportunity to place "non-advice" orders) creates an uneven playing field in respect of competition with US brokers and in respect of competition amongst and between Canadian brokers.


## The Proposal

The fundamental concept underlying the Committee proposal is that the nature of the transaction should determine the level of suitability required for client

protection. Relief from suitability should be determined on a trade-by-trade basis, with suitability obligations only triggered when recommendations are made. The issues of how the trade is entered or how payment for services is rendered are not relevant in determining suitability requirements.

The Association believes that a trade-by-trade suitability model will facilitate an efficient, fair and competitive secondary market. It will enhance market competitiveness and ensure that investors receive the choices they want, within an appropriate regulatory framework of investor protection. The proposed relief will not remove a Member firm's obligation of high standards of professional conduct and other responsibilities imposed by securities legislation.

## Next Steps

The Association is currently drafting a position paper for submission to the CSA. The paper outlines a proposal for permitting trade-by-trade relief from suitability, describes the model currently in use in the United States, and addresses the CSA's compliance concerns. 

For more information, please contact:

**Greg Clarke**  
Senior Vice-President  
Member Regulation  
(416) 865-3038, [gclarke@ida.ca](mailto:gclarke@ida.ca)

## The IDA Welcomes New Members:

**Berkshire Securities Inc.** February 14

**McFarlane Gordon Inc.** April 11

**Qtrade Investor Inc.** May 29

# Representing Members' Interests

*The Investment Dealers Association is actively involved, on a regular and ongoing basis, in representing Members' concerns and interests to governments and other organizations. Since our last issue, the IDA has been active on a number of fronts.*

## **SEC Exemption for Canadian Investment Dealers to Handle Canadian Self-Directed Tax-Advantaged Plans for Canadian Residents in US**

In early June, the United States Securities and Exchange Commission (SEC) agreed to exempt Canadian investment dealers from US registration requirements to permit Canadian dealers to manage Canadian tax-advantaged accounts (RRSPs and RRIFs) of Canadians who are resident in the United States.

The IDA had been working with the SEC to obtain such relief since US State Securities Regulators approved a similar provision in 1995.

The exemption means that Canadian dealers do not need to become registered under US federal law in order to continue to deal with the RRSPs and RRIFs of clients who have moved to the United States. The measure will clarify the requirements for dealing with such accounts and provide relief to clients who have had their investment options restricted until the issue was resolved. The SEC will now also permit RRSP accounts of Canadian residents in the US to hold any security, including Canadian mutual funds, qualified for inclusion in an RRSP. (See also bulletin No. 2736)

A number of American States have not yet amended their regulations and the IDA is currently working to obtain relief for Canadians resident in the US and their investment dealers.

For more information, please contact:

**Greg Clarke**  
Senior Vice-President, Member Regulation  
(416) 865-3038, gclarke@ida.ca

## **Payments System Access Symposium**

The IDA organized a payments system access symposium for Member firms that had expressed interest in offering payment services, such as chequing accounts and debit cards,

to their clients. Federal reform legislation based on the MacKay Task Force recommendations, tabled in the House of Commons in June, will broaden access to the payments system to include regulated securities firms.

The purpose of the symposium was to inform Member firms what access to the payments system would entail, the "risk-proofing" requirements banks will place on dealers, designated as Indirect Clearers, to settle payments obligations on behalf of dealer clients and the various payments services options available in the marketplace. Several chartered banks that offer a range of payments services to financial institutions participated in the symposium. The presentations focussed on the issues and concerns raised in a Member firm survey conducted earlier this year.

For more information, please contact:

**Ian Russell**  
Senior Vice-President, Capital Markets  
(416) 865-3036, irussell@ida.ca

## **Changes to Thin Capitalization Rules**

Federal Finance Minister Paul Martin has announced recently publicized changes and clarifications to the thin capitalization rules announced in the 2000 Budget. The IDA had expressed concerns about the adverse impact of these changes upon domestic debt markets.

The thin capitalization rules in the Income Tax Act prevent foreign-owned corporations resident in Canada from using excessive amounts of debt when they capitalize their Canadian operations. The Budget had announced that the allowable limit of interest-deductible borrowings by the subsidiaries of non-resident companies would be lowered to a 2 to 1 leverage ratio from the existing 3 to 1 ratio, and debt guaranteed by the non-resident parent would be included in the leverage calculation. The inclusion of guaranteed debt in the leverage calculation was a significant departure from previous policy and would damage the liquidity of short-term corporate debt markets, the competitiveness of the near bank sector, and cause many foreign financial subsidiaries to reduce or wind up operations in Canada.

While the allowable interest-deductible leverage will stay at 2.1, guaranteed debt will not be included in the leverage calculation. Finance will also embark on extensive consultations with affected parties, including the IDA, over the next year to consider possible additional amendments.

For more information, please contact:

**Ian Russell**

Senior Vice-President, Capital Markets  
(416) 865-3036, [irussell@ida.ca](mailto:irussell@ida.ca)

## ***Integrated Disclosure System***


A Working Group of the Corporate Finance Committee has prepared an IDA submission to the CSA Proposal for an Integrated Disclosure System. Working Group Members include Committee chairman Peter Jones (National Bank Financial), Kirby Gavelin (RBC Dominion Securities Inc.), Bill Wood (Scotia Capital), Gene McBurney (Griffiths McBurney & Partners Inc.), Tom Allen (Public Director, IDA Board) and Ian Russell.

The central aspects of the proposal are:

- 1) the proposal integrates prospectus disclosure with the continuous disclosure system to provide a seamless and

comprehensive disclosure regime for reporting issuers;

- 2) the traditional corporate disclosure documents, the Annual Information Form (AIF) and quarterly reporting (defined as the Quarterly Information Form (QIF)) become the centrepiece of the disclosure process; and
- 3) reduced emphasis is placed on prospectus documents for disclosure purposes, and the related regulatory review and approval process will shorten the offering period for issuers.

The Committee has responded in detail to the thirty-four questions raised in the Concept Proposal to assist CSA staff in structuring the proposed integrated disclosure system. 

For more information, please contact:

**Ian Russell**

Senior Vice-President, Capital Markets  
(416) 865-3036, [irussell@ida.ca](mailto:irussell@ida.ca)

## **Reminder...**

**T**he Investment Dealers Association of Canada (IDA) will be holding its annual Panel Auditors' Seminar to update you on recent trends in the Canadian Capital Markets and current regulatory issues that will assist you in the planning of Member firm audit engagements.

The meeting is open to partners, managers and senior auditors engaged on investment dealer audits. Binder material for the meeting will be made available and distributed on the morning of the meeting to attendees. This information provides useful resource material and may be subsequently distributed to other interested staff members of your firm.

So that appropriate meeting arrangements can be made, we request that panel auditors email, phone or fax confirmation of attendance and number of staff attending to **Heather Barclay** at [hbarclay@ida.ca](mailto:hbarclay@ida.ca), phone: (416) 943-6931 or fax: (416) 943-6753 no later than August 11, 2000.

For information on attending the Panel Auditors' Seminar in Montreal to be presented in French, please contact **Marie-Noel Racine** at [mracine@ida.ca](mailto:mracine@ida.ca), phone: (514) 878-2854.

The particulars of the meeting are as follows:

**Date:** Friday, September 8, 2000  
**Location:** Ernst & Young Training Centre  
1 First Canadian Place  
16th Floor, Toronto  
Meeting Room A  
**Time:** 8:15 a.m. - Coffee  
8:30 a.m. - 12:00 p.m. - Presentations

Among the topics to be discussed will be Recent Regulatory Changes by **Richard Corner** and Capital Markets Update by **Ian Russell**.

# Regional Dealers Forum 2000

The Regional Dealers held their 2nd Annual Forum on June 15, 2000, following the IDA Annual Conference in Toronto. Attendance was strong and the topics discussed varied.

## ***Presentations and Speakers***

**Victor Rogers**, Chair, Regional Dealers Executive Committee, opened the Forum by giving an update on the progress of the Committee over the past year. Mr. Rogers then introduced the following speakers:

- **Peter Bailey**, IDA Senior Vice-President, Trade Association, who spoke about the Trade Association's accomplishments over the past year and recommended that in the upcoming year the Regional Dealers, with the assistance of the Trade Association:
  - "slice & dice" the IDA's membership (group Members with like Members, instead of all Members attending all meetings)
  - from the reconstituted groups that are created, form discussion groups or round tables on topics of interest to those Members
  - encourage Members to divulge information on commoditized issues in the round tables, so Members can learn from each other
  - focus attention on specific topics that are of particular interest to the Regional Dealers and use the structure to move issues to the Board for review.
- **Barbara Stymiest**, President and CEO, Toronto Stock Exchange, who talked about the Toronto Stock Exchange's efforts to work with its Members and focus on proactive change with respect to our rapidly changing industry. She also addressed competitive issues and emphasized the necessity of the TSE to form strategic alliances with other world class exchanges.
- **Bill Hess**, President and CEO, Canadian Venture Exchange, who discussed the need in Canada for increased small and micro cap financing and the structure needed to foster that growth.
- **Greg Clarke**, IDA Senior Vice-President, Member Regulation, who spoke of the regulatory and policy

issues with which Regional Dealers must contend.

- **Jacques Ménard**, IDA Chair 2000/2001, who affirmed his and the Board's commitment to the Regional Dealers' needs.
- **Joe Oliver**, IDA President & CEO, who discussed several issues of concern to the Membership, namely, the Financial Planning Proficiency Rule, the recognition of the MFDA and full service suitability requirements.
- **Robert Gannon**, Vice President, Management Services, Securities Industry Association, who invited the Regional Dealers to attend the SIA's Local Firms Conference in Chicago, October 2000. The SIA will charge IDA Members the same attendance fee as regular SIA members.

## ***IDA Fees***

The increase in the minimum IDA fee (from \$5,000 to \$10,000) was discussed at the Forum. The IDA staff advised that an industry committee, with broad industry representation, had studied the fee question thoroughly and developed the new structure. Further, IDA staff noted that the minimum fee increase was implemented in response to the BCG Report that determined that IDA fees should be increased to reflect actual IDA costs and partially equalize the subsidization effect between member groups.

## ***Regional Reports***

The Regional Dealers Committee Executive, (being the Chairs of each region's Regional Dealers Committee), also spoke briefly on the issues that are of concern in their respective regions. The issue of the governance of the Regional Dealers Committee was specifically discussed.

## ***TSE Reception***

Following the Forum, the attendees and invited guests enjoyed a reception hosted by the Toronto Stock Exchange.

For more information, please contact:

**Morag MacGougan**,  
Ontario Regional Director  
(416) 943-6991, [mmacgougan@ida.ca](mailto:mmacgougan@ida.ca)



# Regulatory UPDATE

## ***New rules now in effect:***

The Association announced a **Reduction in 90-day Training Program Requirements for Investment Representatives**. As IRs do not provide "advice" the 90-day training program requirement has been reduced to 30-days for IRs. The rule change was made effective April 17, 2000 through the issuance of IDA Member Regulation Notice MR-021.

The Association has implemented new **Policy No. 6, Part I - Proficiency Requirements**. The Policy updates and consolidates the proficiency requirements currently contained in numerous by-laws and regulations. The Policy also introduces a modified Branch Managers Course which separates out the options portion of the course and a new Professional Financial Planning Course and Investment Management Techniques Course. The policy was made effective May 11, 2000 through the issuance of IDA Bulletin #2717.

**Provider of Capital Concentration Charge:** As previously announced in the Winter 2000 edition, the Association announced changes to eliminate standby subordinated debt for regulatory capital purposes on January 24, 2000, to be effective April 1, 2000. One of the accompanying amendments to the elimination of standby subordinated debt was the introduction of an anti-avoidance rule, called the provider of capital concentration charge. This rule, set out as new Schedule 14 to Form 1, serves to limit the ability of a Member to transfer capital related assets back to its provider of capital by imposing a capital charge if a Member's exposure to its provider of capital exceeds a certain dollar threshold. In response to questions from Member firms regarding the completion of this new schedule, Member Regulation Notice MR-024 has been issued. This notice provides detailed instructions as to the completion of Schedule 14 as well as provides a more current version of the Limited Recourse Call Loan Agreement.

**Offsets involving Convertible Securities and Like Instruments:** While not a rule change, the recently issued Member Regulation Notice MR-027 may be of interest to those Member firms who enter into offsets involving convertible securities and like instruments. The notice summarizes rulings granted in the past relating to such offsets and the basic principles used to arrive at these rulings. The objective of this notice is to assist Member firms in determining the appropriate capital/margin treatment for

offsets they may wish to enter into for similar products in the future.

**List of Securities Eligible for Reduced Margin:** Late in 1998, the Canadian Derivatives Clearing Corporation decided to cease production of the list of option eligible securities. Consequently, the Association undertook to review the parameters used to determine securities eligible for a reduced margin rate. As a result of this review, new parameters have been adopted to grant a reduced margin rate to only those securities that demonstrate sufficiently high liquidity and low volatility. As announced in Bulletin #2732 and Member Regulation Notice MR-030, implementation of this new list, to be called the "List of Securities Eligible for Reduced Margin", is to be effective with the publication of the List of Securities Eligible for Reduced Margin as at June 30, 2000. It is expected that publication of this new list will not take place until towards the end of August.

The Association recently announced the **SEC Exemptions which permit Canadian Broker-Dealers that are Members of a Canadian SRO to deal in the Self-Directed Tax Advantaged Retirement Accounts of Canadians who are resident in the United States**. The SEC relief permits Canadian broker-dealers that are members of a Canadian SRO to deal with the RRSP and RRIF Accounts of Canadians that are resident in the U.S., but maintain these retirement accounts in Canada. However, the federal relief from registration requirements is currently only available in particular states that have also implemented similar exemption provisions. The details are contained in IDA Bulletin #2736 issued on July 4, 2000.

## ***Upcoming rule changes:***

Rules that will become effective in the coming months include:

- **Exemptions Requests and Exemption Hearings:** Under proposed Policy No. 6, Part I Proficiency Requirements and Part II Course and Examination Exemptions, the District Councils have the power to grant discretionary exemptions. The proposed amendments will set out the procedure for those circumstances where applicants determine that they wish to seek an exemption from the applicable District Council.
- **Referral Arrangements and Trade Names:** As a result of the CSA Distribution Structures Position Paper, the IDA is currently developing rules to address under what circumstances referral fees and commission splitting may be permitted and when trade names may be employed by the Member and its salespersons. The rules are intended

*Continued on Page 14...*

# Highlights from the 20

Some 250 participants from Canada's investment industry attended the IDA's 84<sup>th</sup> Annual Meeting and Conference, held this year at the Toronto Westin Harbour Castle Hotel.

The theme of this year's Conference was "Celebrating our History". The Association honoured Past Chairmen from 1972-1999 at a Gala Dinner attended by over 350 guests. Twenty-two past chairmen were in attendance, as well as past Association Presidents **Andrew Kniewasser** and **Charles Caty**, and retired Association Secretary **Eileen Andrews**.

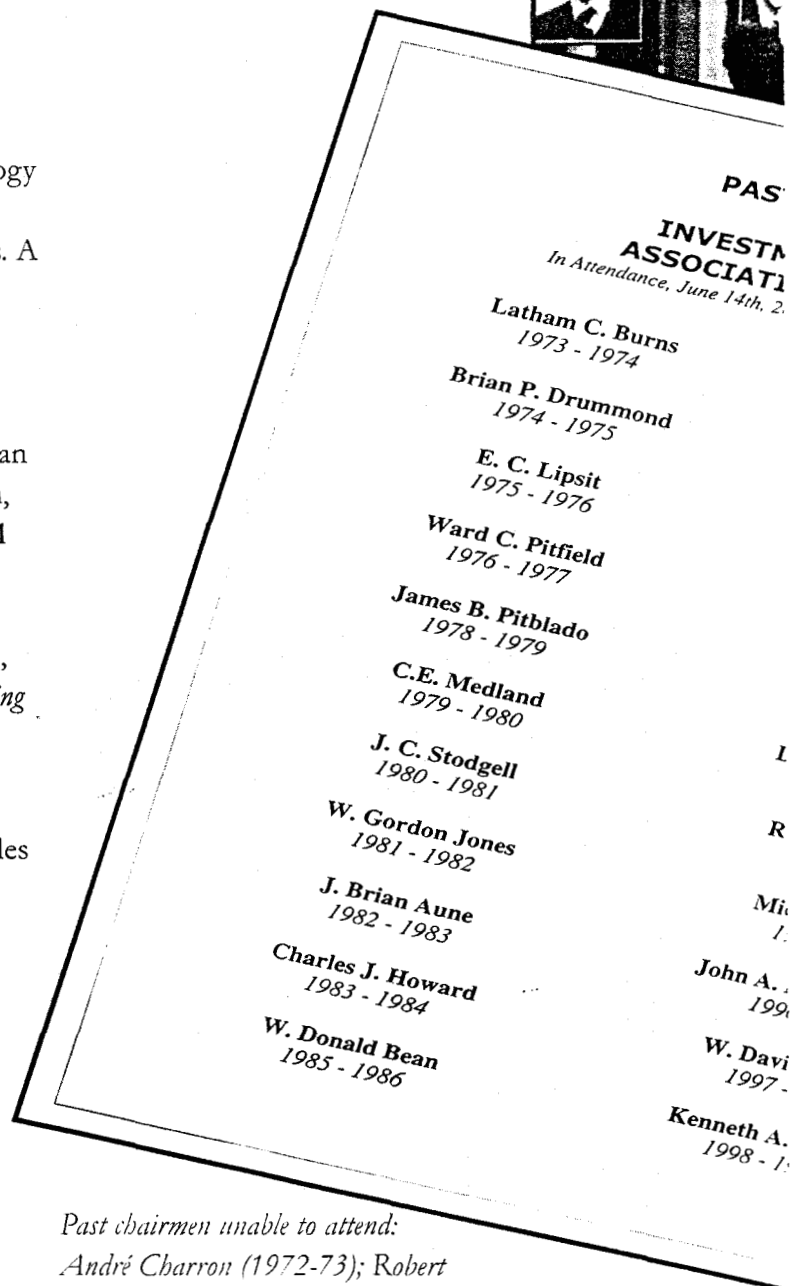
Conference delegates participated in an outstanding Speakers' Program that focussed on issues of technology and globalization, their impact upon the retail and institutional business, and potential strategic responses. A new feature at this year's Conference was the Leaders' Panel, *Surviving and Thriving in the New Millennium*, featuring **Stanley Hartt**, Chairman, Salomon Smith Barney Canada Inc.; **Gene McBurney**, Chairman, Griffiths McBurney & Partners; **Ken Shields**, Chairman and CEO, Goepel McDermid Inc.; and **David Wilson**, Co-Chairman and Co-Chief CEO, Scotia Capital. **Earl Bederman**, President Investor Economics Inc.; **Gary Reamey**, Principal Edward Jones; and **John See**, Vice Chair, TD Waterhouse Investor Services (Canada) Inc., offered an outstanding retail panel discussion, *Responding to the Demands of the New Retail Investor*.

Delegates also enjoyed presentations by:

- **John Philip Coghlan**, Vice-Chairman of The Charles Schwab Corporation and Enterprise President of Schwab Institutional;
- **Kevin Kelly**, President, Fidelity Investments Institutional Services Company Inc., Boston, USA;
- **Michel Finzi**, Senior Vice-President, Instinet Corporation;
- **Charles Ellis**, Managing Partner, Greenwich Associates;
- **Keith Ambachtsheer**, President, K.P.A. Advisory Services Ltd.;

- **Paul Ingrassia**, President, Dow Jones Newswires; and
- **Steven Wallman**, Founder, Chairman and CEO, FOLIO (fn), Inc.

Copies of Conference speeches and presentations are available at the IDA web site at [www.ida.ca](http://www.ida.ca).



Past chairmen unable to attend:

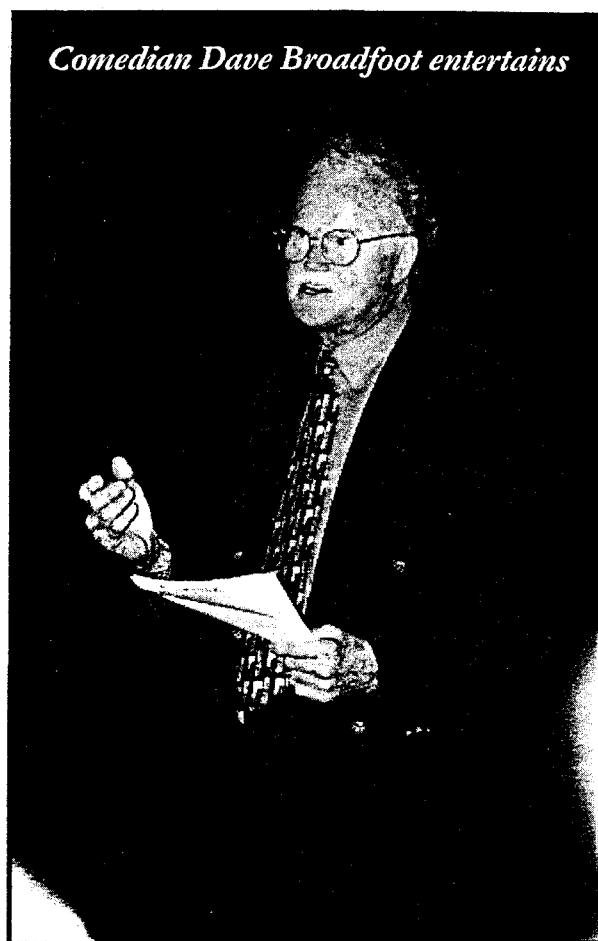
*André Charron (1972-73); Robert Wyman (1977-78); Pierre Brunet (1984-85); Frank Lamont (1986-87), deceased; and G. Edmund King (1993-94)*

# Conference in Toronto

It's not too soon to mark your calendar for next year's Conference. Join us at the Manoir Richelieu, La Malbaie (near Quebec City), June 17<sup>th</sup> to 19<sup>th</sup>, 2001.

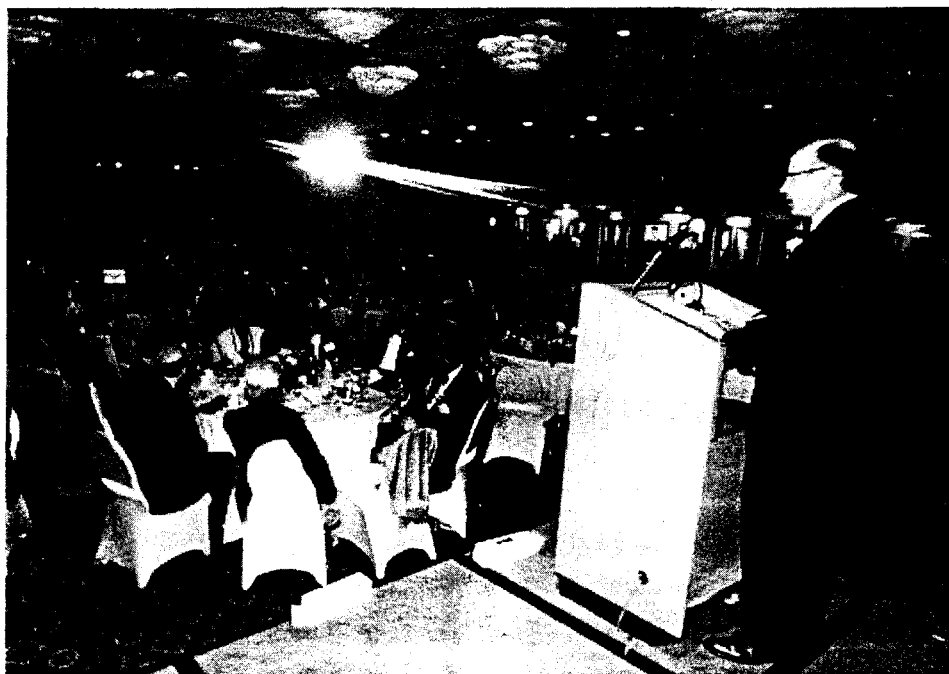


*Above: honouring past chairmen*



*Comedian Dave Broadfoot entertains*

*Below: 1999 - 2000 IDA Chair Chuck Winograd addresses delegates at the Gala Dinner*



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**ILERS**  
**ANADA**  
*rbour Castle Hotel*  
**Anthony S. Fell**  
 1987 - 1988  
**Wald K. Johnson**  
 1988 - 1989  
**St. B. Harrison**  
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to ensure compliance with the CSA Paper and to clarify the IDA's current position on these issues.

- **Policy No. 2 Minimum Standards for Retail Account Supervision:** A subcommittee of the Joint Industry Compliance Group has been in the process of reviewing Policy No. 2 and revising various provisions contained therein. IDA staff have made further changes to the policy and it will be returned to the Joint Industry Compliance Group for review and approval.

- **A Policy on Reporting Requirements:** This policy has been developed and approved by the Joint Industry Compliance Group. This "whistleblowing" policy requires applicable Members and their Partners, Directors, Officers, and RRs to report to the applicable Member firm and/or SRO items such as material changes in registration information, customer complaints, securities related claims pending or disposed, civil litigation claims, settlement agreements, the commencement of internal investigations, etc. The policy is currently under further development by IDA staff.

- **Relief from Suitability:** The Association, in conjunction with the Joint Industry Compliance Group's Full-Service Brokers Suitability Sub-Committee, has been reviewing suitability requirements for its Members over the past year. The Canadian Securities Administrators issued a Press Release on April 10, 2000 providing relief from suitability requirements for discount brokers and those Member firms that create separate business units. In response to the Press Release, the Association is currently preparing a proposal for submission to the CSA requesting further relief from suitability requirements for full-service Members.

- **Responsibilities of Compliance Officer and Ultimate Designated Person:** These proposed rules will clearly set out the role and responsibilities of the Chief Compliance Officer as opposed to those of the Ultimate Designated Person who will be required to be a Chief Executive Officer, Chief Operating Officer, President or other similar position that has been granted decision-making authority.

- **Amendments to the Cash Account Rule set out in Form 1:** Amendments that will modify the requirements for cash accounts to:

- Tighten and conform the credit practices followed by Member firms with respect to customer cash accounts;
- Establish implicit margin rates that a Member firm must apply when determining the sufficiency of

collateral within a customer cash account; and

- Specifically require that security positions used as collateral for cash debit balances be included as an "amount loaned" exposure for the purposes of calculating the security concentration charge on Schedule 9 of Form 1.

A bulletin will be issued shortly to set out the timetable for a phased-in implementation of these amendments as follows:

- **October 1, 2000 - Start of Testing:** Members should have systems modifications complete in order to test the new rule.
- **October 1, 2000 to November 30, 2000 - Testing Period:** Members should be testing systems required for the implementation of the new rule.
- **December 1, 2000 - Implementation Date:** Effective implementation date of the new rule.
- **December 1, 2000 to January 31, 2001 - "Safe Harbour Period":** Members should be using the new rule. During this time, while Members should be using the new rule in their capital calculations, Members will not be charged with a capital deficiency or be deemed to be in Early Warning if such situation is due to the amendments to the rule.

- **U.S. Withholding Tax Regulation Amendments:** These IRS tax regulation amendments come into effect on January 1, 2001. To prepare for these amendments, the joint IDA/CBA U.S. Withholding Tax Working Group was formed in early 1998 with a mandate to develop a standard Canadian financial institution withholding tax agreement. The development of this agreement was seen as being critical if Member firms wished to continue to provide their customers the ability to invest in U.S. securities at reasonable withholding tax rates. The alternative, to provide significantly greater customer account documentation to the IRS, was not seen as a viable alternative. As a result, the working group has met on regular occasions over the past two years to develop a standard agreement, negotiate the terms of this agreement with the IRS and when the IRS announced their intention to have one global agreement, negotiate concessions to this global agreement on behalf of Canadian financial institutions. As a result of this effort, the working group feels that it is now in a position to recommend the use of this global withholding tax agreement by Member firms. It should be noted however, that should a Member firm wish to enter into this agreement with the IRS (and become a "Qualified Intermediary" under the terms of the agreement), enhanced "know your client" procedures/documentation

requirements will have to be adopted. In order to assist Member firms in learning about these regulation changes, a Frequently Asked Questions page has been posted on the IDA web site. Further, a questionnaire was recently circulated to Member firms requesting that they report on their preparedness to adhere to these new regulations.

#### ■ **Capital requirements for Underwriting**

**Commitments:** Amendments that will modify Regulation 100.5 and Schedule 2A of Form 1 that set out the capital requirements for underwritings. While there are several amendments, the ones of most consequence are the adoption of lower margin rates (for 25% and 50% margin rate securities) during the underwriting period, the establishment of a lower capital requirement (subject to certain conditions) where expressions of interest have been received from exempt list purchasers and the revision of the acceptable form of new issue letter for capital requirement reduction purposes.

■ **Equity Margin Rate Project:** This project has now been underway for roughly nine months. The objective of this project is to replace the existing margin rate methodology used for equity securities, (which is based on market price per share), with a methodology that more accurately tracks market risk. In order to develop a replacement methodology, various methodologies have been reviewed with the requirements that:

- The methodology selected would have to accurately track an individual security's market risk by measuring both price risk and liquidity risk; and
- The methodology selected would have to be reasonably simple to implement both from an operational and investor education standpoint.

The methodology selected and referred to as the "basic margin rate" methodology is essentially a methodology for determining a customized margin rate for each equity security. At this point a review of the assumptions to be used in this new methodology along with a study of the impact this approach would have on overall margin rates is underway.

■ **Trade date/settlement date margining:** The purpose of this proposal is to amend Note #5 in the General Notes and Definitions of Form 1 to allow Member firms to margin one block of accounts on one basis (either on a settlement date or trade date basis) and the other block of accounts on another basis provided that one of the two blocks is limited to acceptable institution, acceptable counterparty, regulated entity and investment counsellor accounts. The method chosen by the Member firm for an account will have to be used consistently from month to month. The objective of this proposal would be to allow

a Member firm to margin its retail accounts on one basis (most likely trade date basis) and its institutional accounts on a different basis (most likely on a settlement date basis).

■ **Capital and margin requirements for S&P/TSE 60 Index products:** Amendments that will modify Regulations 100.2, 100.8, 100.9, 100.10 and 100.12 to include requirements for the S&P/TSE 60 Index products that are the same as the existing requirements for Toronto 35 Index products.

■ **Cessation of the Quarterly Operations Questionnaire (QOQ) and Review of the Form 1 (Joint Regulatory Financial Questionnaire and Report (JRFQ&R)):** Amendments that will modify the form and content of the information being reported through the JRFQ&R and the Monthly Financial Report (MFR) as well as result in the cessation of the QOQ. The objective is to identify opportunities for rationalizing the regulatory burden of reporting without compromising the regulator's ability to monitor and review the operations of Members.

■ **Electronic Signatures:** Draft rules are currently being developed. Considerable attention has been paid to the recently enacted Canadian *Personal Information Protection and Electronic Documents Act*, the U.S. *Electronic Signatures Act*, and various other Electronic Signature legislation being enacted in other provinces. The IDA's intention is to draft flexible rules that will be able to meet technological advances.

■ **Day Trading:** Draft rules are currently being developed. Considerable attention has been paid to the NASD's proposed rule change to the 2300 series of the NASD rules. The IDA's intention is to create certain proficiency requirements for those wanting to participate in day trading activities as well as to regulate day trading strategies providers.

■ **Discretionary vs. Managed Accounts:** The IDA is currently drafting amendments to Regulation 1300.3 and 1300.5 to separate the characteristics of discretionary and managed accounts. The line between these two types of account structures has been blurred and as a result, discretionary accounts must be restricted and used only as a temporary measure, instead of the current practice of these accounts being consistently renewed annually. ☐

For more information, please contact:

**Keith Rose,**  
Vice-President, Regulatory Policy  
(416) 943-6907, krose@ida.ca

# The Districts Report

## **Pacific District**

### ***Pacific District Annual Meeting***

The Pacific District Annual Meeting was held on May 11, at the Four Seasons Hotel, followed by a reception.

**Richard Rousseau**, Vice President, Director & Branch Manager at National Bank Financial Ltd., was elected as the Chair of the Pacific District Council, and **John Van Koll**, CFO, VP & Secretary, Goepel McDermid Inc., was elected as Vice Chair.

**Ward McMahon**, Chair of the Pacific District Council for the past two years, was presented with a plaque to commemorate his term with the IDA. The plaque was custom designed to replicate one given to his father, **J.A. McMahon**, who served as Chair of the Pacific District Council from 1941 to 1943. Particularly because of the connection to his father, the plaque has a special meaning for Ward. His contribution to the IDA has been greatly appreciated.

Participation in the Member Regulation and the Government Liaison committees was formalized on June 21, 2000 at the Pacific District Council meeting.

### ***Industry News***

#### **Hauchecorne Decision – Corporate Veil:**

An appeal hearing by the British Columbia Securities Commission, over a Vancouver Stock Exchange decision, included general wording about firms' obligation "to pierce the corporate veil in any circumstance and determine the beneficial owners of an account". This decision caught the attention of the industry. While recognizing the importance of knowing your client, the practicalities and value of determining beneficial owners in all circumstances are viewed with some apprehension. Another BCSC Hearing was held on July 24, 2000. A group of nine firms had been granted intervenor status and were represented at the Hearing. The IDA staff is working with the intervenor group and the BCSC to clarify the "Know Your Client" rule in the context of the original decision. Any policy changes that may flow from those discussions will have implications across the country and will be subject to the normal policy formulation and approval processes.

#### ***Office Expansion***

The new office space that has been under construction for the past several months was completed in early July. The IDA, now occupying space on two floors, can comfortably

accommodate the tremendous growth in staff which has more than doubled in the past year.

### ***BC Business Summit 2000***

The IDA, as a key participant in the British Columbia business community, was very active in the "BC Business Summit 98". The work of the Summit group has continued and expanded since that time. The number of organizations supporting the Summit work has increased from 26 in 1998 to 51 today. In 1999, a panel traveled the province to validate the recommendations of the 1998 Summit and to add greater regional perspective. It has just been announced that a Summit 2000 event is in the planning stages. We expect that the event will be a significant milestone that further demonstrates the credible voice of business in this province and encourages public debate on key issues. The IDA is involved, along with a broad base of companies and industry leaders, in organizing the Summit.

For more information, please contact

**Warren Funt**, Pacific Regional Director  
(604) 331-4750, [wfunt@ida.ca](mailto:wfunt@ida.ca)

### ***Prairie Region***

This has been an interesting and busy year for the securities industry in the prairie region. The amalgamation of the Vancouver and Alberta stock exchanges to form the Canadian Venture Exchange (CDNX) has been positive for our business, creating a larger and more liquid market for junior companies. The inclusion of the Winnipeg Stock Exchange in this realignment will occur soon.

Coincident with the exchange amalgamation was the transfer of Member regulation to the IDA from CDNX. This change has resulted in an expansion of the Calgary IDA office.

#### ***Alberta:***

The Alberta Securities Commission recognized the IDA as a SRO under the Securities Act. The result over time will be a



closer monitoring of IDA regulatory functions by the Commission.

With the creation of CNDX, Bill Hess resigned his position as chair of the Commission to become President of CNDX. Stephen Sibold has been appointed as Commission Chair.

During 1999, nine additional dealers obtained registration in the province as compared to 12 last year.

Sixty-four branches or sub-branches were opened as compared to 72 last year and 35 were closed (5 last year). \$796,000 in registration fees were collected from Members with \$637,000 passed on to the Alberta Securities Commission.

#### *Saskatchewan:*

**Ron Lusting**, CIBC World Markets Inc. Regina, was elected as Chair of the Saskatchewan District.

The District continued to maintain a positive relationship with our government representatives and the staff of the Saskatchewan Securities Commission.

The annual Christmas reception was held in Regina in mid December and was well attended by Members, business and community leaders and, the Minister responsible for the Saskatchewan Securities Commission, the Honourable **Chris Axworthy**.

The following represents the approvals granted this past year for resident individuals in the employ of Members in the various categories:

Registered representatives	19
Registered mutual fund representatives	16
Rfc/fcor	1
Investment representatives	18
Investment options representatives	1
Branch managers	2
Transfers	31
Change of status	52
Terminations	64
Branch/sub branch office openings	18
Branch/sub branch office closings	2
Branch/sub branch relocations	3

It should be noted the statistics for previous years included

non-resident applications and approvals. However, effective July 1998, non-resident applications are not being included.

#### *Manitoba:*

**Greg Bieber**, Bieber Securities Inc. was elected Chair of the Manitoba District.

The recent change in government in Manitoba brought in the third Minister of Consumer and Corporate Affairs in three years. In March, the District held our annual Minister's Dinner with the Honourable **Ron Lemieux** and we were encouraged by the positive response we received. The Minister is open and willing to carry on discussions to recognize the IDA as a self-regulatory organization in the province of Manitoba. This is a very positive step and our Council will continue to pursue this issue.

During 1999 this Council approved a total of 74 resident applications in the categories of registered representative (20), registered mutual fund representatives (13), Rfc/fcor (4), investment representatives (27), investment options representatives (1), Irfc/fco (2), trading officers (4), and branch managers (1). There were 39 transfers, 40 change of status and 64 terminations, with 23 branch/sub branch opening, nine closings and one relocation. There were a total of 425 resident registrants in the District at the end of the year. Non-resident applications are not included in these totals.

For more information, please contact:

**Terry Melling**, Prairie Regional Director  
(403) 260-6278, [tmelling@ida.ca](mailto:tmelling@ida.ca)

#### **Ontario District**

##### ***District Council Annual Meeting – May 10, 2000***

The Ontario District held its Annual Meeting on Wednesday, May 10, 2000 on the 17<sup>th</sup> Floor Xchange Conference Centre at 121 King Street West in Toronto. **Todd Monaghan**, Past Chair of the Ontario District Council, chaired the meeting.

At the meeting, **David Santina** of Goldman Sachs Canada Inc. was elected Chair of the District Council and **Sean Church** of Charles Schwab Canada, Co. was elected Vice-Chair.

The District also acknowledged the contributions of the retiring Members of the Ontario District Council, namely **Brigitte Geisler** of CT Securities Inc. (former Chair); **Heather Stewart**, formerly of CIBC World Markets Inc.; **Karen Taylor**, formerly of Research Capital Inc.; **Todd Monaghan** of First Associates Investments Inc.; **Neil Selfe** of RBC Dominion Securities Inc.; and **Laura Lindsay** of TD Securities Inc.

It was also announced at the meeting that **Susan Latremaille** of RBC Dominion Securities Inc. will remain on the Council this year in her role as the 1999/2000 Ontario Distinction Finalist.

The new Members of the Council elected at the meeting were: **Rose Baker**, RBC Dominion Securities Inc.; **Diane Bohaker**, Edward Jones; **Frank Laferriere**, Berkshire Securities Inc.; **Derek Nelson**, HSBC Securities (Canada) Inc.; and **Gordon Robinson**, MD Management Limited. The balance of the Council are: **James Barltrop**, Scotia Capital Inc.; **Norman Graham**, Scotia Capital Inc.; and **Thomas Flanagan**, BMO InvestorLine Inc.

Following the meeting, those present and invited guests enjoyed a reception in the Main Lobby of the Xchange Conference Centre.

### ***OSC/FSCO Merger***

Ontario Finance Minister **Ernie Eves** announced the merger of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single Crown corporation.

**David Brown**, Chair of the OSC, stated that the merger of the OSC and FSCO will create a comprehensive regulatory structure that recognizes changes in the marketplace and is flexible enough to adapt to developments in the future.

**Dina Palozzi**, CEO & Superintendent of FSCO, stated that "a single provincial authority will provide a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, and enhance the competitiveness of the Ontario financial services sector".

This initiative is the first of its kind in North America and it is expected that other provinces are soon to follow Ontario's lead.

### ***Five Year Review Of Securities Legislation In Ontario***

The Ontario Securities Act provides that, every five years, the Minister of Finance is to appoint an Advisory Committee to review the legislation, regulations and rules relating to matters dealt with by the Ontario Securities Commission. The Advisory Committee invited interested parties to make written submissions with respect to the matters raised in the Issues List or any other related matter.

The Investment Dealers Association of Canada submitted a comprehensive response to the Advisory Committee.

For more information, please contact:

**Morag MacGougan**, Ontario Regional Director  
(416) 943-6991, [mmacgougan@ida.ca](mailto:mmacgougan@ida.ca)


### ***Atlantic Region***

The Halifax office shifted into high gear in March and April to co-ordinate well attended high profile events for the Executive Visit to Prince Edward Island and New Brunswick. Participation by senior representatives of the business community, the securities industry, and government bode well for the Association and its Members in Atlantic Canada. The economic outlook for all four provinces is positive and the provincial governments appear determined to bring fiscal policy into line with the rest of the country.

Annual meetings for the four Atlantic District Councils were held during the month of May. New Chairs were introduced in New Brunswick – **Terry Richardson**, Scotia Capital Inc. – and in Nova Scotia – **Gordon Anderson**, CIBC World Markets Inc. **Kevin Breen**, TD Securities, and **Andrew MacLean**, BMO Nesbitt Burns, continue as Chairs in Newfoundland and Prince Edward Island respectively.

We were very pleased that **Ruth Goldbloom**, OC accepted the invitation to become the Public Director for Atlantic Canada on the IDA Board of Directors. **Lonnie Holland**, Beacon Securities, has replaced **David Beazley**, Acadian Securities, as the industry director for the region.

The district annual meeting in Halifax was followed by a reception co-hosted by the IDA and Canadian Securities Institute. Member firms, fund managers, mutual fund dealers, the Nova Scotia Securities Commission, educators, business and association leaders, and the media were well represented.

Going forward, the Association has been invited to participate in a number of substantial projects including the review of a new securities act in New Brunswick, the restructuring of securities regulation in Nova Scotia, the updating of securities legislation in PEI and Newfoundland, and the growth of the Chamber and Junior Achievement movements, among others. **Jim Stevens**, the Atlantic Regional Director has recently been elected to the board of the Atlantic Provinces Chamber of Commerce. The traditionally warm Atlantic hospitality seems to have plenty of room for representatives of the securities industry! 

For more information, please contact:

**Jim Stevens**, Atlantic Regional Director  
(902) 423-8289, [jstevens@ida.ca](mailto:jstevens@ida.ca)

# Enforcement: Disciplinary Decisions

*As a national self-regulatory organization of the Canadian Securities Industry, the IDA enforces rules and regulations regarding the sales, business and financial practices of its Member firms. Investigating complaints and disciplining Members are part of the IDA's regulatory role.*

*The IDA's enforcement division may conduct an investigation of a Member firm or registered person as the result of an investor complaint or where it is considered necessary or desirable to ensure compliance with IDA By-laws, Regulations or Policies. A Member firm or registered person can be summoned to a hearing and, if it is found that a violation has occurred, disciplinary penalties may be imposed. Whenever the IDA takes a disciplinary action against a Member firm, or registered employee, notice of the penalty is published in the form of a Disciplinary Bulletin distributed to securities regulators and the media.*

## **Michael Brian McCrea (No. 2682/00)**

**Violation:** Failed to observe high standards of ethics in the conduct of his business by misleading and deceiving his employer, Member Firm, in using the firm's Proprietary, Error, Inventory or Average Price Accounts for trades that resulted in personal gains. Misled and deceived Member Firm in transferring a loss from his personal account to the firm's Proprietary Account. Failed to seek approval from Member Firm for his personal trades, contrary to internal policy.

**Penalty:** Permanent Prohibition from approval in any capacity; \$100,000 fine; and \$9,775 towards costs of the investigation.

## **Warren Mackenzie (No. 2686/00)**

**Violation:** Failed to follow client instructions and executed a discretionary transaction in a non-discretionary account.

**Penalty:** \$8,000 fine; and \$1,550 towards costs of the investigation.

## **Reginald Groome (No. 2688/00)**

**Violation:** Failed to exercise due diligence to learn essential facts about his client when opening her account; failed to ensure that recommendations were appropriate and in keeping with client's investment objectives; and failed to ensure that the acceptance of orders were within the bounds of good business practice.

**Penalty:** \$7,000 fine; and \$1,500 towards costs of the investigation.

## **Stefan Varga (No. 2684/00)**

**Violation:** Effected discretionary trades in a non-discretionary client account.

**Penalty:** \$5,000 fine; and \$1,500 towards costs of the investigation.

## **James Joseph McHugh (No. 2687/00)**

**Violation:** Engaged in conduct unbecoming by obtaining \$30,000 personal loan from his client; facilitated a beneficial purchase of shares for his client from corporation whose shares were not publicly traded; and failed to disclose personal business dealing with his client to his employer, Member Firm.

**Penalty:** \$20,000 fine; seven years suspension from any supervisory capacity; rewrite the CPH exam; twelve months close supervision; and \$2,750 towards costs of the investigation.

## **Carlin Thiessen (No. 2691/00)**

**Violation:** Engaged in conduct unbecoming by issuing cheques on different accounts that, to his knowledge, had insufficient funds.

**Penalty:** \$5,000 fine; rewrite CPH exam; six months strict supervision; and \$1,075 towards costs of the investigation.

***Douglas Allan  
(No. 2693/00)***

**Violation:** Failed to use due diligence to ensure that a transaction in a managed account was consistent with the Managed Account Authorization and Agreement signed by his client and internal policy of Member firm.

**Penalty:** \$2,500 fine; and \$800 towards costs of the investigation.

***Marc Henri Laurent Lafleur  
(No. 2702/00)***

**Violation:** Conduct unbecoming in that, under false pretences, he obtained loans from five clients and sold them fictitious securities. On two occasions, he misappropriated funds from an elderly client.

**Penalty:** \$200,000 fine; permanent prohibition from the industry in any capacity; and \$6,000 towards costs of the investigation.

***Burns Fry (now BMO Nesbitt Burns Inc.) (2705/00)***

**Violation:** Failure to establish and maintain adequate procedures for supervision of clients' RRIF accounts during the period August 3, 1992 through to July 31, 1996.

**Penalty:** \$25,000 fine; and \$5,000 towards costs of the investigation.

***Gorinsen Capital Inc. and Kenneth Norquay  
(2723/00)***

**Violation:** Conduct unbecoming on the part of Gorinsen by allowing its name to be used by an unregistered person to facilitate a private placement of securities. Norquay failed to conduct appropriate and diligent inquiries regarding a private placement and unknowingly allowed an unregistered person to act in furtherance of trades.

**Penalty:** Gorinsen was fined \$7,500 and disgorgement of commissions in the sum of \$2,736. Norquay was prohibited from any involvement in private placements for three years. \$1,500 to be paid by each towards costs of the investigation.

***Dennis James Hill  
(2706/00)***

**Violation:** Failed to disclose his interest in a client account. From January through to July 1997, inclusive, he accepted remuneration, gratuity or benefit from a person other than Member Firm, in respect of activities carried out by him on behalf of Member firm and in connection with the sale of securities.

**Penalty:** \$35,000 global fine; rewrite CPH exam; six months strict supervision; and \$2,675 towards costs of the investigation.

***James Paul Dunlop  
(No. 2707/00)***

**Violation:** Failed to supervise the handling of client account to ensure that recommendations by a registered representative were not excessive and unsuitable.

**Penalty:** \$15,000 fine; rewrite Branch Mangers Qualifying exam; and \$2,500 towards costs of the investigation.

***Merrill Lynch Canada Inc.  
(No. 2708/00)***

**Violation:** Failed to properly supervise trading activities in a client account to ensure that recommendations by a registered representative were not excessive and unsuitable.

**Penalty:** \$25,000 fine; disgorgement of commissions in the amount of \$11,000; and \$5,000 towards costs of the investigation.

***Midland Walwyn Capital Inc. (now Merrill Lynch Canada Inc.)  
(No. 2712/00)***

**Violation:** Failed to supervise trading activities in 24 client accounts to ensure that a registered representative used due diligence to learn or properly document essential facts and investment objectives of each client and that trades in the accounts were suitable. Failed to follow and /or enforce its own internal policies governing letters authorizing transfers of securities and funds between accounts; issuance of third party cheques; changing client addresses; and safekeeping of a critical form.

**Penalty:** \$25,000 fine; and \$2,000 towards costs of the investigation.

**Briane Andersen  
(No. 2714/00)**

**Violation:** Made unsuitable recommendations to a client; effected discretionary trades in a non-discretionary client account; and failed to comply with Association request to provide a statement to Association staff conducting an investigation of this matter.

**Penalty:** \$5,000 fine for unsuitable recommendation; \$15,000 fine for effecting discretionary trades; disgorgement of commissions in the sum of \$8,039. For the refusal to provide a statement, a fine of \$10,000 and \$5,000 towards costs of the investigation.

**Lynn David Chouinard  
(No. 2718/00)**

**Violation:** Made an unsuitable recommendation for a client account.

**Penalty:** \$5,000 fine; and \$1,000 towards the costs of the investigation.

**Suspension of A.C. MacPherson  
& Co.  
(No. 2719/00)**

**Violation:** Effective April 6, 2000, prohibited by order of the Ontario Securities Commission from acting as principal in the sale of securities to clients. Effective April 30, 2000, prohibited from acting as agent in the purchase of securities for clients and activities limited to orderly winding-up of business affairs, including the return of all clients' securities and free credit balances / transfer of such securities or free credit balances to another Association Member. Effective July 5, 2000, to cease business as an investment dealer and to comply with the provisions of Association By-law 8 in resigning its Membership in the Association.

**Penalty:** Effective May 1, 2000, suspension of rights and privileges of Membership in the Association, except to the extent necessary to comply with the Ontario Securities Commission Order, dated April 06, 2000.

**Gary Robert Voncina  
(No. 2726/00)**

**Violation:** Advised three clients to participate in a private placement of a small company in which he was officer and director; executed off-book transactions, without knowledge of employer Member Firm and failed to disclose to employer his role as officer and director of the company.

**Penalty:** \$5,000 fine; rewrite CPH; and \$500 towards costs of the investigation.

**George Georgiou  
(No. 2727/00)**

**Violation:** Executed discretionary trades in non-discretionary client accounts. Without obtaining a signed margin agreement, and while the account was restricted, effected short sales in client accounts; failed to exercise due diligence to ensure that recommendations to clients were suitable; and failed to obtain a properly execute trading authorization in favour of a third party. Borrowed from and loaned monies to clients; entered into financial arrangements to privately settle client complaints without knowledge of Member employer; and provided clients with false and misleading information regarding their accounts.

**Penalty:** \$50,000 fine; ten years suspension from the industry, commencing January 1995 until January 2005; rewrite CPH before returning to the industry; three years strict supervision upon return; and \$15,000 towards costs of the investigation.

**Anthony Mah  
(No. 2734/00)**

**Violation:** Failed to use due diligence to ensure that recommendations to a client were appropriate and in keeping with client's investment objectives.

**Penalty:** \$5,000 fine; and \$1,000 towards costs of the investigation.

**Randall Harrett  
(No. 2742/00)**

**Violation:** Improperly attempted to transfer corporate funds to a client account to eliminate a debit balance he inadvertently created.

**Penalty:** \$20,000 fine; commencing December 28, 1998, ten years suspension from acting as an officer in any Member firm; and rewrite CPH exam.

**Derivative Services Inc. ("DSI") –  
Termination of Membership /  
Malcolm Robert Bruce Kyle ("Kyle")  
(No. 2737/00 and NO. 2738/00)**

**Violation:** Kyle and DSI failed to provide documents or other information requested by Association staff in the course of an investigation.

**Penalty:** DSI fined \$35,000 and Kyle \$45,000; \$5,000 joint and several liability towards costs of the investigation; termination of Membership; and bar on reinstatement until such time as the fines and cost are paid and documents requested by the Association have been provided.

**Mark Fridgant  
(No. 2741/00)**


**Violation:** During a period of six years, between March 1990 and July 1996, effected 56 trades in a client's RRIF account on a deferred sales charge basis to generate excessive commissions. Between December 1991 and July 1996, executed trades in a client's RRIF account that created or increased a debit balance and created a potential tax liability for the client. Between March 1990 and July 1996, failed to exercise due diligence to ensure recommendations were appropriate.

**Penalty:** \$55,000 fine; one month suspension, followed by two years of strict supervision; and rewrite CPH exam.

**Quynh Lam Phan  
(No. 2744/00)**

**Violation:** Permitted third party to trade in a client account

without a duly signed trading authorization and failed to use due diligence to ensure that recommendations were appropriate and in keeping with client's investment objectives. Failed to act with objectivity and independence by assisting a client draft a will designating him executor and heir and continuing to act as registered representative for the account; failed to notify his employer, Member firm, of his beneficial interest in the client account; and failed to update the New Client Application Form to reflect the material change of his personal interest in the account.

**Penalty:** \$5,000 fine for failure to obtain trading authorization; \$10,000 for making unsuitable recommendations; disgorgement of commissions in the amount of \$4,320; \$10,000 for assisting client prepare a will naming him as executor and heir and for failing to update the New Client Application Form; rewrite CPH exam; twelve months strict supervision; and \$3,000 towards costs of the investigation. 

For more information, please contact:

Fred L. Maefts,  
Vice-President, Enforcement  
(416) 943-6904,  
fmaefs@ida.ca


## Dialogue with the OSC 2000

*Dialogue with the OSC* will take place on October 31, 2000, in Toronto. For the first time, a modified version of *Dialogue with the OSC*, including live presentations by Ontario Securities Commission staff in each location and a satellite-link interactive broadcast from Toronto, will be offered to locations outside Toronto, including Sudbury, London and Ottawa.

The agenda focuses on the significant regulatory issues and events that have emerged over the past year. Topics will include an in-depth discussion of the financial planning initiatives now underway at the Commission as well as the different issues surrounding mutual funds, particularly the launch of the MFDA. Other topics of interest will include enforcement issues as well as a review of the OSC position on current financial reporting and auditing practices. The Ontario Government's plan to merge the OSC with the Financial

Services Commission of Ontario will also be discussed.

Chairs from four securities commissions from across Canada will review national financial services issues, followed by guest luncheon speaker, Dr. Sherry Cooper, Chief Economist of BMO Nesbitt Burns.

The speakers and panels at *Dialogue with the OSC* offer a unique insight into the thinking and strategies behind current regulatory initiatives. The conference also provides financial services professionals with an opportunity to meet Commission staff members and discuss topics relevant to the industry. The cost is \$350 in Toronto and \$250 in Sudbury, London or Ottawa if you register before September 11, 2000. For full details, check the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or call the Dialogue hot-line at 416-593-7352. 

# Mutual Fund Dealers Association of Canada Update

## **Securities Commissions Begin Public Comment Process on MFDA Application for Recognition as the SRO for Mutual Fund Dealers**

On December 22, 1999, the MFDA filed an application with the Alberta, British Columbia and Ontario Securities Commissions for recognition as a self-regulatory organization for mutual fund dealers.


The Commissions subsequently published the MFDA's application for recognition for a 90-day public comment period that commenced June 16, 2000.

The MFDA application includes the Description of the Structure and Self-Regulating Activities of the MFDA; MFDA draft By-Law No. 1; MFDA draft Rules; and MFDA draft Policies and Forms. These documents are available at the MFDA website at [www.mfda.ca](http://www.mfda.ca) (please see the SRO Recognition section) or on CD-ROM and in printed format by calling the toll free number 1-888-466-6332.

The Commissions' public comment process provides

members of the public and the mutual fund industry an opportunity to be involved in the creation of the MFDA. All of the comments received will be reviewed by the Commissions and forwarded to the MFDA for response.

As part of the SRO recognition process, the Commissions have also published their recognition criteria. The Commissions' rules requiring mutual fund dealers to join the MFDA were published for a 30-day comment period that also commenced June 16, 2000.

During the month of July, the MFDA held a series of Canada-wide information workshops in 18 cities across the country. Over 2,500 individuals attended the workshops. For those who were unable to attend the workshops, the PowerPoint presentation offered at the workshops is available on the MFDA website at [www.mfda.ca](http://www.mfda.ca). 

For more information, please contact:

**Laurie Gillett**

Corporate Secretary and Membership Services Manager  
(416) 943-5827, [lgillett@mfda.ca](mailto:lgillett@mfda.ca)

## IDA Website: Don't forget to visit us!

The IDA website at [www.ida.ca](http://www.ida.ca) is well worth a visit. It contains a host of current and useful information about the Association (please see, in particular, **About the IDA** for information on the Association's Role and Mandate; Board of Directors; District Councils and other IDA Committees).

Regulatory issues are the topic in the **Regulation** section, where the IDA Rule Book is to be found. IDA Bulletins and Member Notices are here as well, as are helpful discussions in **Frequently Asked Questions**. Wondering what the requirements are for the industry's new Continuing Education program? Take a look at our **Continuing Education** section.

You can turn to the **What's New** page to see the latest bulletins, media releases, new publications or other new developments.

Capital Markets publications are located in **Industry Issues and Info** and can be easily downloaded for reading at home or in the office.

And if you are wondering who to talk to about an issue at the IDA or simply have an information request, use our **Contact Lists** found throughout the website.

## IDA REPORT

*Summer 2000*

The **IDA Report** is published four times a year by the **Investment Dealers Association of Canada**, Public Affairs Department.

We welcome Letters to the Editor and feedback. Send correspondence to Connie Craddock, Director of Public Affairs, at 121 King Street West, Suite 1600, Toronto, Ontario, M5H 3T9. Phone (416) 943-5870 Fax (416) 364-0753 or E-mail [ccraddock@ida.ca](mailto:ccraddock@ida.ca)

*The Investment Dealers Association of Canada is the national self-regulatory organization and trade association of the securities industry. The Association's role is to foster fair, competitive and efficient capital markets by encouraging participation in the savings and investment process, and by ensuring the integrity of the marketplace.*



Printed on recycled paper



The Investment Dealers Association of Canada is the national self-regulatory organization (SRO) and trade association of the securities industry. The Association's role is to foster fair, efficient and competitive capital markets by encouraging participation in the savings and investment process and by ensuring the integrity of the marketplace.

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**VANCOUVER**

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Vancouver, British Columbia V6B 4N9  
Tel: (604) 683-6222 Fax: (604) 683-3491

Web site address: [www.ida.ca](http://www.ida.ca)

Canadian Embassy



Ambassade du Canada

501 Pennsylvania Ave., NW  
Washington, D.C. 20001

September 28, 2000

Mr. Mark Sendrow  
Director of Securities  
Arizona Corporation Commission  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: Arizona Snowbird Proposal

Dear Director Sendrow,

We have been advised by the Investment Dealers Association of Canada that Arizona is considering the adoption of a procedure that will enable Canadian residents to maintain their pre-existing relationships with Canadian investment dealers and their Canadian self-directed tax-advantaged retirement plans ("RRSPs") while they reside in Arizona. The Canadian Government strongly encourages your efforts and hopes that all unnecessary regulatory burdens can be removed.

Canada has a long-standing and rigorous securities regulatory regime that is designed to protect Canadian investors and upon which Canadians justifiably rely. We hope that Arizona will accord the Canadian regulatory regime deference and look to the Canadian regulators as the primary regulators under your proposal. To this end, we would encourage you to provide a securities registration exemption for securities offered and sold to Canadian residents in RRSPs and to rely upon the Canadian regulators to maintain acceptable integrity standards in the Canadian investment dealer community.

Thank you for your consideration of this request.

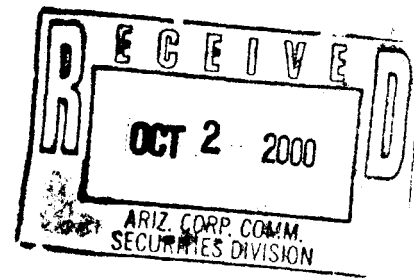
Your sincerely,

A handwritten signature in dark ink, appearing to read "D.G. Waddell".

D.G. Waddell  
Minister (Economic) and  
Deputy Head of Mission

September 29, 2000

Sharleen A. Day, Associate General Counsel  
Arizona Corporation Commission, Securities Division  
1300 W. Washington, Third Floor  
Phoenix, AZ 85007-2996



RE: Notice of Proposed Rulemaking – Title 14, Chapter 4, Article 2 (Canadian Dealers and Salesmen)

I have written this submission to make the Corporation Commission aware of my situation so that when the Commission makes a decision on the proposed rulemaking that it is fully aware of how the legislation and rules currently in effect adversely affect people like me. I urge the Commission to take action to ensure that Arizona residents such as myself are no longer penalized by a set of restrictions that serve no purpose other than to significantly reduce the future retirement income of holders of registered retirement plans in Canada who live in this state.

Prior to moving to Arizona to take a job here, I worked in a Canadian municipality for approximately ten years. During that time I was vested in the Ontario Municipal Employees Retirement System (OMERS), a defined contribution pension plan similar to the State of Arizona or Phoenix pension systems. When I left the municipality and the pension system, I was given the choice of leaving my contributions with the pension system or shifting the contributions into a self-directed retirement saving plan. Had I left my contributions with OMERS, I would have been heavily penalized at the time of retirement, since as with most defined benefit plans, I would have been given a pension based on the average earnings of the last five years of employment, which thirty years from now would be very small amount in real terms because of inflation. By shifting my contributions to a self-directed RSP, which is analogous to rolling-over your pension contributions to a self-directed IRA, I could at least ensure that the funds would grow in bond and stock mutual fund accounts at a reasonable rate.

However, the "roll-over" took a long time to be executed. I was able to put the money into bond mutual funds before leaving for the U.S. with the expectation that I would devise a proper asset allocation once I was here and had some time to do some research. But when I got here, did my research, and then tried to allocate my funds, I found that the Canadian financial institution I dealt with refused to transfer any of my funds. TD Bank refused to deal with my requests, telling me that I was now a U.S. resident and that the Securities and Exchange Commission refused to allow U.S. residents to trade any securities in Canada. When I did research into this issue, I found that there were thousands and thousands of people in the U.S. who were also caught in this strait-jacket – residents of the U.S. who held Canadian RSPs were unable to reallocate their savings because any change (other than a move to pure saving accounts holdings) would be considered an illegal trade in securities by the SEC. Generally this probably wouldn't be a major issue, since most financial institutions only follow the laws of their own country. Unfortunately for U.S. residents holding Canadian RSPs, however, all of the large financial institutions in Canada are moving into the U.S. or are becoming affiliated with U.S. banks and companies, and are unwilling to risk challenging the SEC. As a result, U.S. residents with Canadian RSPs were effectively "trapped in

time" in mutual funds that may be inappropriate or that were underperforming the market.

Now the SEC has finally addressed the issue of U.S. residents holding Canadian RSPs by changing its regulations to allow trading (new rule 237 under the Securities Act of 1933, new rule 7d-2 under the Investment Company Act, and amendments to rule 12g3 under the Securities Exchange Act of 1934), and numerous states have taken action to change their regulations to allow holders of Canadian RSPs to transfer their savings. Unfortunately, the State of Arizona continues to maintain restrictions that do not allow its residents to reallocate their Canadian retirement funds, and I am still unable to move my RSP savings from one mutual funds to another.

In my case, where the majority of my retirement plan funds are "locked in" under Canadian law, I am unable to change the allocation of retirement funds or transfer the money out of the plans (until I'm 65 years of age). Even if I did break those RSPs that are not "locked in", it would trigger a major taxable event similar to that associated with a U.S. resident breaking an IRA. Since the Canada-U.S. tax treaty explicitly recognizes the ability of U.S. residents to defer income in RSPs in the same way as IRAs, there should be no reason why I would have to break retirement plans and incur huge tax liabilities. During the time I have been in Arizona, and my funds have been in bond funds or cash, the TSE 300, a common index for the Canadian stock market, has increased in value by about 50%, while my bond funds have declined in value. I have, in effect already, missed out in one of the greatest bull markets in history because of U.S. securities regulations. With approximately \$60,000 in RSPs, I found this issue to be sufficiently distressing to consider leaving the U.S. (now only Arizona) to regain control over my retirement savings.

In reviewing possible changes to the current rules, I hope that the Commission will consider the following facts, which should support my contention that a change in the current rules are definitely needed:

- Both Canadian and American citizens are adversely affected. Anyone who has worked in Canada and then moved to (or back to) Arizona, and who has contributed to retirement savings plans there, will be unable to reallocate those savings. With NAFTA and greater labor mobility in North America, people of all nationalities are moving back and forth more, and are as a result being affected by regulations of this type. I am not just a Canadian snow-bird here for the winter months – I am a tax-paying professional who is a son of an American citizen and a husband of an American citizen – a full-time resident who will likely become a U.S. citizen and live in here indefinitely.
- Given that several states have altered their rules to allow people like me to adjust their RSP holdings, an outcome of the Commission not doing the same in Arizona will be to create an incentive for people in my situation to move to one of those states. Since many of the people in my situation will be well-educated professionals (I have two professional graduate degrees) who have retirement savings, the state will become less attractive to anyone with Canadian retirement savings accounts, probably an undesirable thing with the current labor shortage in Phoenix.
- The individuals involved will not be the only entities who are penalized financially. The State of Arizona will also miss out on its share of the tax-deferred income that

would have been realized had the affected individuals been able to shift their retirement assets out of under-performing mutual funds into better mutual funds. In my case, if I am still living in Arizona at age 65, the value of the income derived from a mixed portfolio that performs well will be much greater than the value of the income derived from a mix of bond funds and cash (which I currently have). Since I will be a resident of Arizona, paying Arizona taxes, it will be the Arizona treasury, and not the Ontario treasury, that will miss its share of the potential added retirement income.

- Arizona brokers and realtors have nothing to gain from maintaining the current restriction on Arizona residents making Canadian trades when those trades are limited to retirement accounts that existed before the individuals moved to (or back to) the U.S. Since the majority of my RSPs are locked in due to the fact that the funds came from OMERS, the only party to gain from the current situation is Toronto Dominion Bank (and its mutual fund subsidiary), since it continues to keep my accounts "captive". By Canadian law I can never transfer those funds out of the country until I am of retirement age (I am now 36).
- Regulations that were originally designed to protect consumers are being distorted to hurt consumers. Consider the analogous situation of a member or employee of the Commission who had significant retirement savings in various IRA funds and accounts, moved to Mexico or Canada and then was told that his or her funds were now "locked in place", never to be transferred again.

Thank you for this opportunity to express myself. I hope this information will affect your decisions.

Sincerely,



Douglas Frost  
2935 N. 68<sup>th</sup> St., #214  
Scottsdale, AZ 85251  
(602) 256-5618 (B)  
(480) 970-5432 (H)

## Exhibit B

### Contents

#### Informal comment letters on proposed rule 148

December 4, 2000, letter from the Investment Funds Institute of Canada

December 5, 2000, letter from Dorsey & Whitney

December 5, 2000, letter from the Canadian Embassy

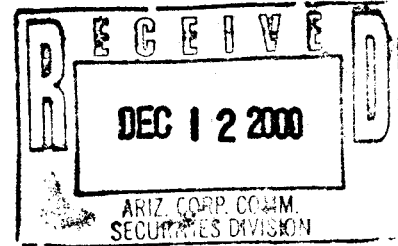
December 20, 2000, letter from the British Columbia Securities Commission



THE INVESTMENT FUNDS INSTITUTE OF CANADA  
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

151 YONGE ST., 5<sup>TH</sup> FLOOR, TORONTO, ONTARIO, M5C 2W7 TEL 416 363-2158 FAX 416 861-9937 INTERNET [www.ific.ca](http://www.ific.ca)

December 4, 2000



Sharleen A. Day  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, AZ 85007  
U.S.A.

Dear Ms. Day:

RE: Amended Cross Border Proposal: Rule 148 – Transactions Effected by Canadian Dealers and Salespersons

Thank you for your letter of November 22, 2000, enclosing the revised proposed cross border transaction rule for IFIC's review.

IFIC is most appreciative of the attention that the Arizona Corporation Commission has paid to its comments, forwarded on July 12, 2000, on the previous draft rule, and encourages the speedy adoption of proposed rule 148.

Yours sincerely,

John Mountain  
Vice President, Regulation

# DORSEY & WHITNEY LLP

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TELEPHONE: (612) 340-2600  
FAX: (612) 340-2868

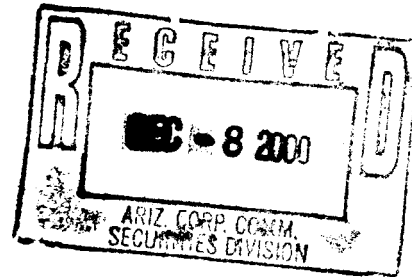
**CHARLES LADDY POTUZNIK**  
**(612) 340-2914**

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December 5, 2000

**BY FACSIMILE (602-594-7470)**

Sharleen A. Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007



**Re: Amended Cross Border Proposal: Rule 148 –  
Transactions Effected By Canadian Dealers and Salesmen**

Dear Ms. Day:

I would like to thank you for the opportunity to comment on proposed Rule 148 (the "Proposed Rule") that you sent to me. As you know, we represent the Investment Dealers Association of Canada (the "IDA") and are writing this letter on their behalf.

In the first instance, we would like to commend the Commission's consideration of an exemption procedure for Canadian broker-dealers and their salesmen. As we understand the Proposed Rule in the context of Arizona's Blue Sky laws, the Proposed Rule would provide exemptions from Arizona's broker-dealer, salesman and securities registration requirements for transactions that meet all of the Proposed Rule's conditions.

Since the Proposed Rule reflects many of the comments raised in our letter of August 31, 2000, our comments are limited to the following:

1. Subsection B.1. We believe that this subsection should clarify that Canadians who are visiting Arizona are covered. We feel that Canadians who visit Arizona on a short-term vacation or for a business trip have the same need to deal with their Canadian broker-dealer/salesman as a Canadian who stays longer. Accordingly, we would recommend that the clause "or is visiting" be added after "temporarily resides in."

2. Subsection B.2. We note that this subsection requires the holder or contributor to be from Canada and be a resident of Arizona. We have several technical problems with this language. First, U.S. citizens may go to Canada for long-term employment and while in Canada establish these accounts for Canadian tax purposes since they would be subject to Canadian income taxes. After they move back to Arizona, would they be considered "from Canada?"

DORSEY & WHITNEY LLP

Sharleen A. Day, Esq.

December 5, 2000

Page 2

Second, why does the holder or contributor have to be resident in Arizona? What if the person only temporarily resides in or is visiting Arizona? Furthermore, we believe that this subsection is inconsistent with the treatment of Canadian retirement accounts held by U.S. persons under rules adopted by the U.S. Securities and Exchange Commission ("SEC") at CFR 230.237(a)(6) and 17 CFR 7d-2(a)(6), which define "Participant" to include any holder of or contributor to a Canadian retirement account who is a resident of the United States or temporarily present in the United States.

Accordingly, we would recommend that this subsection be revised to read as follows:

"2. A person present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the person is the holder or contributor."

3. Subsection D.3. Our review of the "bad boy" provisions found in Arizona's securities law and rules has revealed a number of inconsistencies. Accordingly, we would revise this subsection to clarify its coverage in a manner that parallels the approach taken in subsection D.2, which focuses on conduct of which fraud is an essential element. We recommend that this subsection be revised to read as follows:

"3. Is not subject to an order, judgment, or decree issued by a SRO, administrative body or court of competent jurisdiction (i) finding a violation of an investment-related law or rule of which fraud is an essential element and (ii) enjoining or restraining the salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities."

4. Subsection E.5.a. We would recommend that the phrase "and resident" be added after the clause "which the salesman is registered" to clarify that only the application of one Canadian jurisdiction be filed (i.e., the jurisdiction in which the salesman is resident).

Since the Proposed Rule has such important implications for the IDA and its member firms, we would like the opportunity to discuss these comments with you and answer any questions you may have. Accordingly, I will call you in the near future. Thank you for your efforts.

Very truly yours,



C. L. Potuznik

CLP:vkW

cc: Mr. Ian CW Russell, IDA Senior Vice-President, Capital Markets  
D. Grant Vingoe, Esq.

Canadian Embassy

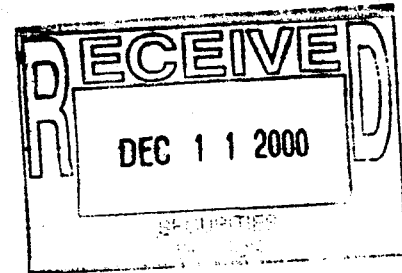


Ambassade du Canada

501 Pennsylvania Avenue, N.W.  
Washington, D.C. 20001

December 5, 2000

Ms. Sharleen A. Day  
Associate General Counsel  
Arizona Corporation Commission  
1200 West Washington,  
Phoenix, Arizona 85007



Dear Ms. Day,

Re: Amended Cross Border Proposal: Rule 148 - Transactions Effected  
by Canadian Dealers and Salesmen

Thank you for your letter of November 22 regarding the treatment of Canadian tax-deferred retirement savings accounts. As you know, the adoption of exemptions in this area are extremely important to Canadian residents to maintain their pre-existing relationships with Canadian investment dealers and their Canadian self-directed tax-advantaged retirement plans ("RRSPs"), while they reside in Arizona. The Canadian Government has discussed your proposed amendment with our investment community and has received a very positive reaction.

Thank you again for your efforts in favourably resolving this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Doug G. Waddell".

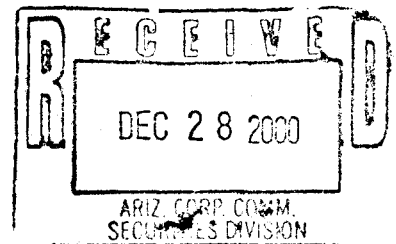
Doug Waddell  
Minister (Economic) and  
Deputy Head of Mission



British Columbia Securities Commission

December 20, 2000

Mr. Mark Sendrow  
Director  
Securities Division  
Arizona Corporation Commission  
1300 West Washington  
Third Floor  
Phoenix, Arizona  
85007



Dear Mr. Sendrow:

Re: Amended Cross Border Proposal: Rule 148 – Transactions Effected by  
Canadian Dealers and Salesmen

Thank you for the opportunity to comment on proposed Rule 148. The rule represents a significant milestone toward implementation of the 1995 NASAA Cross-Border Trading Committee Proposal. To our knowledge, Arizona is the first jurisdiction to expressly refer to the *Bureau des services financiers*, making your state a model for other jurisdictions.

We have reviewed the December 5, 2000 comment letter from Dorsey & Whitney LLP sent to you on behalf of the Investment Dealers Association of Canada ("IDA") and we support their comments. A copy of the IDA letter is enclosed for your convenience.

In numbered item 3 of their letter, the IDA requests that subsection D.3 be revised. In addition to the IDA's comments, we would like to point out that the proposed Canadian rule to implement the NASAA Proposal does not contain a corresponding blanket prohibition. National Instrument 35-101 *Conditional Exemption from Registration for United States Broker-Dealers and Agents* ("NI 35-101") only requires a United States broker-dealer or agent to notify



Mr. Mark Sendrow  
Page 2  
December 20, 2000

provincial and territorial securities regulators of prior criminal or quasi-criminal proceedings, or of any decision, order or ruling made as a result of any form of proceeding involving fraud, theft, deceit, misrepresentation or similar conduct. NI 35-101 will come into force on January 1, 2001.

If I can be of further assistance, please do not hesitate to contact me or Robert Hudson, Acting Director, Policy and Legislation.

Yours Truly,

Adrienne R. Salvail-Lopez  
Commissioner

cc: Sharleen A. Day  
Associate General Counsel  
Securities Division  
Arizona Corporation Commission

Robert Hudson  
Acting Director  
Policy and Legislation Division  
British Columbia Securities Commission

Encl.

ASL/RJH/AK:elo

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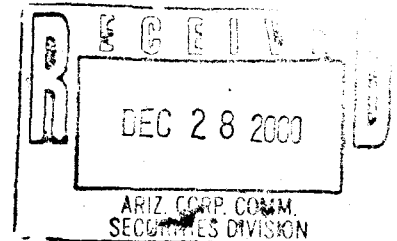
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December 5, 2000

**BY FACSIMILE (602-594-7470)**

Sharleen A. Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007



Re: **Amended Cross Border Proposal: Rule 148 -  
Transactions Effected By Canadian Dealers and Salesmen**

Dear Ms. Day:

I would like to thank you for the opportunity to comment on proposed Rule 148 (the "Proposed Rule") that you sent to me. As you know, we represent the Investment Dealers Association of Canada (the "IDA") and are writing this letter on their behalf.

In the first instance, we would like to commend the Commission's consideration of an exemption procedure for Canadian broker-dealers and their salesmen. As we understand the Proposed Rule in the context of Arizona's Blue Sky laws, the Proposed Rule would provide exemptions from Arizona's broker-dealer, salesman and securities registration requirements for transactions that meet all of the Proposed Rule's conditions.

Since the Proposed Rule reflects many of the comments raised in our letter of August 31, 2000, our comments are limited to the following:

1. Subsection B.1. We believe that this subsection should clarify that Canadians who are visiting Arizona are covered. We feel that Canadians who visit Arizona on a short-term vacation or for a business trip have the same need to deal with their Canadian broker-dealer/salesman as a Canadian who stays longer. Accordingly, we would recommend that the clause "or is visiting" be added after "temporarily resides in."

2. Subsection B.2. We note that this subsection requires the holder or contributor to be from Canada and be a resident of Arizona. We have several technical problems with this language. First, U.S. citizens may go to Canada for long-term employment and while in Canada establish these accounts for Canadian tax purposes since they would be subject to Canadian income taxes. After they move back to Arizona, would they be considered "from Canada?"

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**DORSEY & WHITNEY LLP**

Sharleen A. Day, Esq.  
December 5, 2000  
Page 2

Second, why does the holder or contributor have to be resident in Arizona? What if the person only temporarily resides in or is visiting Arizona? Furthermore, we believe that this subsection is inconsistent with the treatment of Canadian retirement accounts held by U.S. persons under rules adopted by the U.S. Securities and Exchange Commission ("SEC") at CFR 230.237(a)(6) and 17 CFR 7d-2(a)(6), which define "Participant" to include any holder of or contributor to a Canadian retirement account who is a resident of the United States or temporarily present in the United States.

Accordingly, we would recommend that this subsection be revised to read as follows:

"2. A person present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the person is the holder or contributor."

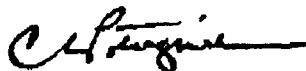
3. Subsection D.3. Our review of the "bad boy" provisions found in Arizona's securities law and rules has revealed a number of inconsistencies. Accordingly, we would revise this subsection to clarify its coverage in a manner that parallels the approach taken in subsection D.2, which focuses on conduct of which fraud is an essential element. We recommend that this subsection be revised to read as follows:

"3. Is not subject to an order, judgment, or decree issued by a SRO, administrative body or court of competent jurisdiction (i) finding a violation of an investment-related law or rule of which fraud is an essential element and (ii) enjoining or restraining the salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities."

4. Subsection E.5.a. We would recommend that the phrase "and resident" be added after the clause "which the salesman is registered" to clarify that only the application of one Canadian jurisdiction be filed (i.e., the jurisdiction in which the salesman is resident).

Since the Proposed Rule has such important implications for the IDA and its member firms, we would like the opportunity to discuss these comments with you and answer any questions you may have. Accordingly, I will call you in the near future. Thank you for your efforts.

Very truly yours,



C. L. Potuznik

CLP:vkW

cc: Mr. Ian CW Russell, IDA Senior Vice-President, Capital Markets  
D. Grant Vingoe, Esq.

## Exhibit C

### Contents

Formal comment letters on proposed rule 148

February 16, 2001, letter from the Investment Dealers Association of Canada

March 9, 2001, letter from Dorsey & Whitney

April 4, 2001, letter from Edward Jones

April 5, 2001, letter from Dorsey & Whitney



INVESTMENT DEALERS ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DES COURTIER EN VALEURS MOBILIÈRES

Ian CW Russell  
SENIOR VICE-PRESIDENT  
CAPITAL MARKETS

February 16, 2001

Ms. Sharleen A. Day  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington  
Third Floor  
Phoenix, Arizona  
85007-2996

Dear Sharleen:

Thank you for your letter of February 12, 2001 informing the IDA of the publication of Notice of Supplemental Proposed Rulemaking in respect of exemptive relief for Canadian Broker-Dealers dealing with the RRSP accounts of Canadians resident in Arizona.

The Association is most grateful for the efforts given by the Arizona Commission staff to provide this exemptive relief for Canadian Broker-Dealers. The proposed rule will benefit Canadians resident in the State and will assist the IDA in efforts to obtain similar exemptive relief in other states.

Yours sincerely,

Ian CW Russell

c.c. Charles Potuznik, Dorsey & Whitney LLP, Minneapolis, MN  
Joseph J. Oliver, President, Investment Dealers Association

# DORSEY & WHITNEY LLP

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March 9, 2001

**BY FACSIMILE (602-594-7470)**

Sharleen A. Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: **Notice of Supplemental Proposed Rulemaking: A.A.C. R14-4-148**  
**Transactions Effected By Canadian Dealers and Salesmen**

Dear Ms. Day:

As you know from Mr. Ian CW Russell's letter of February 16, 2001, the Investment Dealers Association of Canada (the "IDA") is very supportive of the Arizona Corporation Commission's efforts to provide exemptive relief for Canadian dealers and their salesman. As U.S. legal counsel for IDA, we have reviewed the Supplemental Proposed Rule R14-4-148 (the "Supplemental Proposed Rule") and are gratified to find that the Commission has included most of the IDA's earlier comments. Accordingly, our comments on the Supplemental Proposed Rule are limited:

1. Subsection D.2. Generally, this subsection attempts to exclude certain "bad boys" from being able to rely upon the exemption. The IDA supports this policy. Our only concern is that we feel that the use of the word "involving" in the last clause of subsection D.2 is a bit fuzzy. We believe that a better approach would be to require a "finding" of fraud or deceit or a "finding" of a violation of the racketeering or consumer protection laws. While we understand that a "finding" is intended by subsection D. 2, the IDA recommends that the language of subsection D. 2 be made more explicit by expressly using that word.

2. Subsection E.5. We question the need for a salesman filing and recommend that it be deleted in its entirety because it imposes significant, on-going compliance costs on Canadian dealers while adding little to investor protection:

DORSEY & WHITNEY LLP

Sharleen A. Day, Esq.

March 9, 2001

Page 2

1. It is a fundamental principle of the Canadian regulatory scheme that a Canadian dealer can only employ a salesman who is appropriately registered and in good standing in the Canadian jurisdiction from which he or she is effecting securities transactions. Arizona should rely upon the Canadian regulatory scheme to assure that the requirements of subsections E.5.a and E.5.c are met rather than requiring additional regulatory filings.
2. Since the Supplemental Proposed Rule does not attempt to substantively regulate Canadian salesmen and implicitly relies upon the Canadian regulatory scheme in this regard, the annual salesman filing is an unnecessary regulatory burden.
3. The IDA has no objection if Arizona wishes to obtain a consent to service process from Canadian salesmen transacting business in Arizona pursuant to the exemption provided by the Supplemental Proposed Rule. However, the IDA does not believe that an annual filing of a consent to service of process should be required.

In light of the foregoing, we would recommend that subsection E.5 be amended to read as follows:

"E.5. For each salesman effecting transactions in Arizona, the dealer shall file a consent to service of process if the dealer has not previously done so pursuant to this subsection."

Since the Supplemental Proposed Rule has such important implications for the IDA and its member firms, we would like the opportunity to discuss these comments with you and answer any questions you may have. Accordingly, I will call you in the near future. Thank you for your efforts.

Very truly yours,



C. L. Potuznik

CLP:vkW

cc: Mr. Ian CW Russell, IDA Senior Vice-President, Capital Markets  
D. Grant Vingoe, Esq.

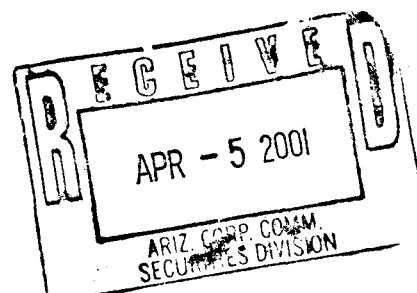
12555 Manchester Road  
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314-515-2000  
www.edwardjones.com

**Edward Jones**

**VIA FEDERAL EXPRESS**

April 4, 2001

Sharleen A. Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington  
- Third Floor  
Phoenix, AR 85007-2996



Re: Comments on the Proposed Adoption of Section R14-4-148  
("Certain Transactions Effected by Canadian Dealers and Salesmen")

Dear Ms. Day :

Edward D. Jones & Co., L.P. ("Edward Jones" or the "Firm") hereby submits its comments on the proposed adoption of the above-referenced rules (the "Rules"). The Rules establish what is commonly referred to as a "Canadian Dealer Exemption" for the State of Arizona (the "Exemption"). Edward Jones appreciates the opportunity to participate in the consideration of this important and timely adoption. Additionally, the Firm thanks the Arizona Corporation Commission (the "Commission") for its clarifications and courtesies in recent weeks.

Background

The Firm operates over 6,600 offices in the United States. The typical Firm office consists of a registered investment representative ("IR") and a non-registered sales assistant. The Firm's wholly-owned subsidiary, "Edward Jones", a limited partnership formed under Ontario law ("EDJ - Canada"), operates and oversees approximately 440 similarly structured offices in Canada. Edward Jones and EDJ-Canada are registered with, and overseen by, both local and national securities regulators in their respective countries.

The Firm has found that a considerable number of EDJ-Canada customers establish accounts in Canada and then move to, or temporarily reside in, "sunbelt" states such as California and Arizona. In order to avoid violating Blue Sky laws, EDJ - Canada routinely restricts such customers from trading in their accounts, apart from accepting unsolicited sell orders. This causes hardship for these customers; further, evidence shows that an increasing number of customers will be adversely affected if they are unable to handle their retirement investments while residing in the United States. Indeed, Arizona is not alone in recognizing that absent the creation of a specific exemption for such "snowbird" customers, significant numbers of retirement accounts would have to lie dormant or be liquidated.

Such results should be outdated in today's increasingly linked, trans-national markets. Additionally, Canada strictly enforces its regulatory scheme with the same zeal as the S.E.C. Accordingly, the Firm feels strongly that any barriers to the management of assets by Canadian customers residing temporarily in the U.S. should be alleviated, if not eliminated.

## The Rules

Thus, Edward Jones applauds the Commission for recognizing and remedying the hardships facing customers with more than one North American residence. Specifically, the Firm acknowledges and supports the broad categories of "customers" outlined in the Rules [Subsection "B," (1) and (2)] as well as the clear delineation of offenses that disqualify salesmen from their utilization of the Exemption [Subsection "D," (1) and (2)].

However, Edward Jones is concerned that an unintended consequence of the Commission's drafting of the Rules may leave the customers of its Canadian subsidiary without the benefits of the Exemption. Concurrently, the Firm hereby submits its comments on one aspect of the Rules, as detailed below.

### Subsection "A." - Dealer Qualifications

The Firm notes that the language of Subsection "A" of the Rules may theoretically disqualify EDJ-Canada from utilizing the Exemption. Subsection "A" is reprinted below:

**A. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, branch of, or a natural person associated with a dealer domiciled in the United States.**

This provision is no doubt aimed at preventing a United States entity (or its agents) from evading registration requirements by dealing with Arizona customers through a Canadian "affiliate" or related operation. Obviously, the Rules should not in any manner serve as a conduit by which individuals or companies avoid registration in Arizona by utilizing a Canadian address, whether genuine or otherwise.

However, in the case of EDJ-Canada (and other Canadian subsidiaries of legitimate United States broker dealers), a broad interpretation of the Subsection might serve to exclude the very parties it was designed to exempt. As is stated above, EDJ-Canada is a wholly-owned but completely distinct subsidiary of Edward Jones. Far from being an "office" of the Firm or extra-territorial "branch", EDJ-Canada offices operate under Canadian law and are audited by Canadian regulators; likewise, EDJ-Canada has its own compliance director, staff of compliance officers, and system of review (i.e., Edward Jones does not supervise the trading activity of EDJ-Canada).

Thus, although EDJ-Canada shares a common name and business model with its American parent, it steadfastly maintains its own identity as a separate legal entity with its own supervisory structure. Moreover, the operations of both the Firm and EDJ-Canada do not permit (nor in any manner reward) an individual IR who might conceive of utilizing a foreign office for illicit trading. Simply put, there is no sharing of customers or accounts between Edward Jones IRs and EDJ-Canada IRs, and the sole-IR office model - with its individualized office ledgers - serves to highlight geographical distinctions rather than to blur them.

To be sure, the phrase "associated with" is accorded various definitions under American securities laws, depending upon the context.<sup>1</sup> If either EDJ-Canada or one of its IRs is deemed to be "associated with" the Firm, then EDJ-Canada is presently ineligible for the Exemption. Thus, IRs employed by the Firm's Canadian subsidiary would be lumped together with the Firm's domestic broker base, and the customers

<sup>1</sup>For example, Section 3(a)(18) of the Securities Exchange Act defines person "associated with" a *broker dealer* or "associated person" of a *broker or dealer*, while Section 3(a)(21) separately defines person "associated with" a *national securities exchange* or *registered securities association*.

who take up residence in Arizona but maintain accounts serviced by brokers employed by EDJ-Canada would be no better off than before the Commission proposed the Exemption.

Accordingly, the Firm suggests that the above language be modified to exclude the possibility that a subsidiary broker-dealer will be denied the exemption based solely upon its corporate ties. The Firm feels that the current language can be easily amended to prevent nefarious uses of the Exemption without altogether excluding Canadian entities affiliated with domestic broker-dealers. To this end, the Firm hereby submits three alternatives:

**Suggestion 1: The Deletion of language -**

The Commission could simply delete the phrase "or a natural person associated with," from Subsection "A." With a minor change to the semantics, the resulting, modified provision would read like this:

- A. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or branch of a dealer domiciled in the United States.**

Such a modification would still serve to prevent an entity incorporated in the United States from utilizing the Exemption to circumvent the Commission's registration requirements; likewise, the Rules' notice requirement (which obligates the Canadian dealer to prove membership in good standing with a Canadian exchange or SRO) would further work to eliminate the possibility of dubious entities committing fraud from abroad.

**Suggestion 2: A Change in Language -**

The Commission could change the phrase "natural person associated with a dealer" to "natural person under the supervision of a dealer" domiciled in the United States. The resulting, modified version would read like this:

- A. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, branch of, or a natural person under the supervision of a dealer domiciled in the United States.**

Such a modification would similarly work to thwart efforts at avoiding registration through the use of extra-territorial branches while serving to heighten awareness that domestic broker-dealers remain responsible for activities emanating from foreign offices. However, affiliates and subsidiaries would not be excluded from the Exemption because such normally maintain their own independent supervisory structure.

**Suggestion 3: Another language change suggestion -**

- A. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, branch of, or a natural person sharing an exchange or registered securities association membership with a dealer domiciled in the United States.**

This modification serves the same purposes as Suggestion 2 above while also specifically precluding a large wirehouse's use of a satellite to enter Arizona's jurisdiction without appropriate Commission registration.

These suggestions are consistent with similar Canadian dealer exemptions adopted by other states<sup>2</sup> as well as the spirit of the approach taken by the S.E.C. in granting exemptive relief from federal requirements for Canadian dealers last year.

As an alternative to using any of the language suggested above, the Commission can simply utilize the language generally adhered to by the S.E.C. in implementing its exemptions from securities registration, namely, excluding from the Exemption those transactions that although in "technical compliance with the rules" are "part of a plan or scheme to avoid registration."<sup>3</sup>

#### Conclusion

Overall, the Firm applauds the Commission for crafting an exemption that serves the purpose of preserving the safeguards established by state registration while accommodating both emerging lifestyles and market realities. To this end, Edward Jones believes that the Exemption is fair and its annual registration requirements not burdensome. But in order for its Canadian subsidiary and its customers who reside in Arizona to avail themselves of the Exemption, the Firm strongly urges the Commission to modify the language concluding Subsection "A" in a manner that continues to preclude fraud without possibly denying a worthwhile exemption to subsidiaries or affiliates of broker dealers headquartered in the United States.

If you have any questions, please feel free to contact the undersigned at (314) 515-3207.

Sincerely,



J. Scott Colesanti  
Senior Compliance Attorney

cc: Gary Reamey  
President and Chief Executive Officer  
Edward Jones

Donald Burwell  
Director of Compliance  
Edward Jones

<sup>2</sup>For example, California's soon to be enacted Canadian dealer exemption requires only that the broker-dealer resident in Canada "has no office or other physical presence in [California]". See, new section 260.204.10 of the Commissioner's Rules under the Securities Law of 1968 [available at "www.corp.ca.gov"; "Rulemaking"; "OP 21/96"].

<sup>3</sup>See, for example, Preliminary Note 6 to "Regulation D", Rules 501-508 (promulgated pursuant to the Securities Act of 1933). 17 CFR section 230.501

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April 5, 2001

**BY FACSIMILE (602-594-7470)**

Sharleen A. Day, Esq.  
Associate General Counsel  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

**Re: Notice of Supplemental Proposed Rulemaking: A.A.C. R14-4-148  
Transactions Effected By Canadian Dealers and Salesmen**

Dear Ms. Day:

This letter supplements our letter dated March 9, 2001 in which we commented upon Supplemental Proposed Rule R14-4-148 (the "Supplemental Proposed Rule") on behalf of the Investment Dealers Association of Canada (the "IDA"). In this letter, we would like to comment on Subsection A of the Supplemental Proposed Rule, which requires a Canadian dealer to meet all of the following conditions:

1. The dealer must be domiciled in Canada.
2. The dealer must have no office or physical presence in the United States.
3. The dealer must not be an office of . . . a dealer domiciled in the United States.
4. The dealer must not be a branch of . . . a dealer domiciled in the United States.
5. The dealer must not be a natural person associated with a dealer domiciled in the United States.

The IDA has no objection to the conditions 1 and 2 set forth above, which seem reasonably intended to limit reliance upon the Supplemental Proposed Rule to dealers that are truly Canadian. In this regard, the Supplemental Proposed Rule appears to be substantially

## DORSEY & WHITNEY LLP

Sharleen A. Day, Esq.

April 5, 2001

Page 2

equivalent to the model language approved by the North American Securities Administrators Association ("NASAA") and recommended to the states for adoption. However, the Supplemental Proposed Rule differs from the NASAA model in that it also includes conditions 3, 4 and 5. The purpose of this letter is to comment on conditions 3, 4 and 5.

Regarding the application of the Supplemental Proposed Rule, we would like to bring to your attention that it is not uncommon for a Canadian dealer to have a subsidiary or sister entity that is separately registered as a U.S. broker-dealer. Similarly, some U.S. broker-dealers have subsidiaries or sister entities that are separately registered Canadian dealers. For purposes of this discussion, a "sister" entity is one that is under common control with another entity. The following examples will clarify these relationships and set forth our interpretation of the application of conditions 3, 4 and 5.

Example No. 1: Canadian Dealer A is a separate legal entity domiciled in Canada, does not have an office or physical presence in the U.S. and is not a U.S. registered broker-dealer. Canadian Dealer A does have a subsidiary or sister entity ("Subsidiary/Sister A"), which is a separate legal entity registered as a U.S. broker-dealer. Since Canadian Dealer A and Subsidiary/Sister A are separate legal entities and are not natural persons, Canadian Dealer A is not an office of, branch of or a natural person associated with Subsidiary/Sister A. Thus, Canadian Dealer A would not run afoul of conditions 3, 4 or 5 and would meet the requirements of Subsection A.

Example No. 2: Canadian Dealer B is a separate legal entity domiciled in Canada, does not have an office or physical presence in the U.S. and is not a U.S. registered broker-dealer. Canadian Dealer B is a subsidiary or sister entity of U.S. Broker-Dealer, which is a separate legal entity registered as a U.S. broker-dealer. Since Canadian Dealer B is not an office of, branch of or a natural person associated with U.S. Broker-Dealer, Canadian Dealer B would not run afoul of conditions 3, 4 or 5 and would meet the requirements of Subsection A.

If the Commission's interpretation of Subsection A and its application to these two examples is different from our interpretation as set forth above, then the Supplemental Proposed Rule should be revised to permit Canadian dealers to be affiliated with separate legal entities that are U.S. registered broker-dealers. To achieve this result, we would recommend that conditions 3, 4 and 5 be deleted and replaced with the requirement that the Canadian dealer not be a registered broker-dealer in Arizona or under Section 15 of the Securities Exchange Act of 1934. This approach would be consistent with the Commission's intent of limiting the availability of the Supplemental Proposed Rule to Canadian dealers who are truly Canadian and who need the relief provided by the Supplemental Proposed Rule. This approach would also be consistent with the Securities and Exchange Commission's requirement in Release No. 34-42906 (June 7, 2000), which provided an exemption for Canadian broker-dealers when effecting transactions with or for Canadian self-directed tax-advantaged retirement accounts. Thus, our recommendation is that Subsection A be revised to read as follows:

DORSEY & WHITNEY LLP

Sharleen A. Day, Esq.

April 5, 2001

Page 3

"The dealer must be domiciled in Canada, have no office or other physical presence in the United States and not be registered as a dealer in this state or as a broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934."

Since the Supplemental Proposed Rule has such important implications for the IDA and its member firms, we would like the opportunity to discuss these comments with you and answer any questions you may have. Accordingly, I will call you in the near future. Thank you for your efforts.

Very truly yours,



C. L. Potuznik

CLP:vkW

cc: Cheryl Farson, Esq. (By Facsimile: 602-594-7470)  
Mr. Ian CW Russell, IDA Senior Vice-President, Capital Markets  
D. Grant Vingoe, Esq.